

Appeal to the Zoning Board of Examiners and Appeals (ZBEA)

Municipality of Anchorage
 Planning Division
 Community Development Department
 PO Box 196650
 Anchorage, AK 99519-6650



APPELLANT*		APPELLANT REPRESENTATIVE (if any)	
Name (last name first) Moose Mamas		Name (last name first) Rebecca Lipson/Ashburn & Mason P.C.	
Mailing Address PO Box 111471		Mailing Address 1227 W. 9th Ave. Ste. 200	
Anchorage, Alaska 99511		Anchorage, AK 99501	
Contact Phone – Day: 907-310-3650	Evening:	Contact Phone – Day: 907-276-4331	Evening:
Fax:		Fax: 907-277-8235	
E-mail: darin@moosemamas.com; dana@moosemamas.com		E-mail: becky@anchorlaw.com	

*Report additional appellants on supplemental form.

APPEAL INFORMATION

Decision Being Appealed (include case or permit number if applicable): Determination on a request for a Use Classification for the Moose Mamas Facility on a parcel located within an R-10 SL (Low Density Residential Alpine/Slope with Special Limitations; per AO 84-21).

Date of Action: 6/8/2022

Legal Description of Property Involved: Lot Sixteen (16), Block One (1), Shangri-La Estates Subdivision, according to Plat No. 2002-118, Anchorage Recording District, Third Judicial District, State of Alaska.

Relationship of Appellant to Action: Petitioner Government Agency Other Party of Interest (see AMC 21.14.040)

Detailed and Specific Allegation(s) of Error: (use additional sheet(s) if necessary)

See attached Narrative.

I hereby certify that (I am)(I have been authorized to act for) a party of interest in the decision being appealed in accordance with the definition in Title 21 of the Anchorage Municipal Code of Ordinances. I understand that the assigned hearing date is tentative and may have to be postponed by Planning Division staff or the Zoning Board of Examiners and Appeals for administrative reasons.

Rebecca Lipson
 Signature Appellant Representative
(Representatives must provide written proof of authorization)

6/28/22
 Date

Rebecca E. Lipson

Print Name

Accepted by:	Poster & Affidavit:	Fee:	Case Number:
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ASHBURN & MASON P.C.

LAWYERS

LAURA C. DULIC • MATTHEW T. FINDLEY • EVA R. GARDNER • REBECCA E. LIPSON • DONALD W. McCLINTOCK III
JEFFREY W. ROBINSON • MICHAEL S. SCHECHTER • ASHLEY K. SUNDQUIST • THOMAS V. WANG
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

June 28, 2022

Attachment to Appeal – Hand Delivery

Re: Moose Mamas-Appeal of Use Classification Request

Dear Board Members:

Applicant Darin Applebury owns over two acres of real property on the Anchorage Hillside. Mr. Applebury is the president of Moose Mamas, an Alaska nonprofit organization that each year accepts a small number of orphaned moose calves between late May and early July. These moose are typically orphaned due to vehicular collisions. Moose Mamas has operated on the Anchorage Hillside since 2015.

Moose Mamas is the only moose calf rehabilitation organization licensed by Alaska Department of Fish and Game (“ADF&G”) in Anchorage. Founded in 2014, its existence is only possible thanks to the efforts of a small group of core volunteers, including Mr. Applebury and Executive Director/Founder Dana DeBernardi.

Per ADF&G policy, orphaned moose calves are first placed with zoos and research organizations. This typically accounts for placement of two to three calves each year. Remaining orphans are received by Moose Mamas under a ADF&G “Temporary Possession – Orphaned Moose Calf Permit” between May and July. Moose Mamas cares for these moose until September or October, at which point they are flown into remote locations off the road system where the State has determined the need for an increase in moose populations. If Moose Mamas is unable to operate, as was the case beginning in June of this year, the heartbreaking result is that the orphaned calves not accepted by research organizations die or are euthanized.

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In 2022, the organization elected to move operations onto Mr. Applebury's property. Consistent with their past practice, Moose Mamas notified the Planning Department and the Municipality again supported the use as being most similar to "a large domestic animal facility" under Title 21 as there is no practical difference between the keeping of the calves and other large ungulates. **Exhibit A.** Relying on the Municipality's determination, Moose Mamas went through the substantial effort to install pens and prepare the property for the summer 2022 season.

However, after apparent lobbying by a neighbor, the Municipality required the Moose Mamas to resubmit its use classification request. On June 8th, reversed its policy determination of the past five-plus years and reclassified the use to "animal shelter," a use only permitted in commercial and industrial zones. This determination is not only incorrect under Code, but effectively deprives Moose Mamas of the ability to operate anywhere in

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the Municipality since commercial and industrial parcels are incompatible with the wooded wildlife setting necessary for temporarily keeping the moose calves before they are returned into the wild.

The Municipality has refused to explain the sudden policy shift or why other use categories – such as the “outdoor keeping of animals” – are not applicable to the proposed use.¹ This is frustrating, as the Planning Department has historically engaged in conversations with applicants rather than immediately force applicants into adversarial appeal proceedings.

Accordingly, Moose Mamas is in the unfortunate position of being forced to appeal the Municipality of Anchorage’s June 8, 2022 Use Classification (“Use Classification”) reversing the Municipality’s past years of policy determinations.

I. Property:

Mr. Applebury’s property is located at 6673 Shangri-La Circle (“Property”). The Property is 97,655 square feet (approximately 2.24 acres) and is zoned R-10, low-density residential, alpine/slope district. Mr. Applebury has resided on the Property as his full-time residence since custom building the single-family home in 2006. The 2022 Municipal tax appraised value of the residence is \$862,600. Mr. Applebury qualifies for and receives the permitted “owners primary residence” tax exemption. Photographs of the lot and existing home are provided on **Exhibit C**.²

II. History:

Moose Mamas has been operating since 2014, when it took over operations from the Alaska Moose Federation. It is a small organization with limited funding. Despite providing a unique and necessary community service, the group does not have funds to purchase or lease a facility for fair market value. Historical facility locations are shown on **Exhibit D** and dates are listed below.

¹ **Exhibit B.**

² This packet contains color photographs, and color copies will be provided at the hearing.

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--**2015-2017**: Brewsters Drive (R-10SL) in Bear Valley. The property was leased for \$1/year, but had no running water or electricity. Ms. DeBernardi lived on-site during the season with her three children.

--**Last month of 2017 season**: Italy Circle (R-6). A wind event on Brewster Drive blew over the work trailers so Moose Mamas temporarily relocated for the last month of the operating season.

--**2018 –2019**: Windsong (R-10SL). Property was leased with MOA knowledge and approval. Relocated because parcel sold.

--**2020-2021**: Showshoe (R-6). Property was leased with MOA knowledge and approval. Relocated given Mr. Applebury is Ms. DeBernardi's domestic partner.

Moose Mamas has always operated with the support of the Municipal Planning Department, which is a condition of its licensing through ADF&G. Recognizing the unique and one-off nature of the use, in the past, the Municipal Planning Department has always found the use most similar to the accessory "large domestic animal facility" use for purposes of the Title 21 regulations. That use is permitted in R-10 (the Property's zoning), and the past facility locations.

III. Discussion.

Use compliance is reviewed on a case-by-case basis "to ensure that the development complies with all applicable standards" of Title 21.³ Through Title 21, the Municipality restricts uses to minimize incompatibility of adjacent properties and guide future development in the direction of conformity with the Comprehensive Plan. Land use is determined by zoning district. Chapter 4 of Title 21 establishes various zoning districts, including residential, commercial, and industrial.⁴ Chapter 5 of Title 21 establishes the uses permitted in each zoning district and begins with a table of allowed uses, which identifies what uses are permitted in each zoning district.⁵ Uses within the table are organized into general "use categories" and specific "use types" "based on

³ AMC 21.03.060(A).

⁴ AMC 21.04 (Table 21.04-1).

⁵ AMC 21.05; AMC 21.05.010 (Table 21.05-1).

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common functional, product, or physical characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions.”⁶

Questions or disputes as to whether a specific use is permitted in a zoning district are handled through Title 21’s classification process.⁷ Anyone can submit an application to the Municipal Planning Department and ask it to conclude that a proposed use for a property is compatible with its zoning. Upon application, the Planning Department Director must evaluate the request pursuant to AMC 21.03.220.C and issue an administrative decision as to whether “the subject use [is] within a use classification set forth in this title and whether such use shall be allowed in the applicable zoning district.”⁸

In making that determination, the director must follow the below standard of review:

C. Standards for review. In evaluating a use classification request, the director shall consider whether the proposed use has an impact that is similar in nature, function, and duration to the other uses allowed in a specific zoning district. The director shall give due consideration to the intent of this title concerning the district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question. The director shall assess all relevant characteristics of the proposed use, including but not limited to the following:

1. The primary activity of the establishment and its relationship to existing use categories and use types. The primary activity may be the principal product or group of products produced or distributed, or services rendered. It may be the share of production costs, capital investment, revenue, shipments, or employment, if evaluating the relative significance of multiple activities.

⁶ AMC 21.05.010.B.

⁷ AMC 21.03.220.

⁸ AMC 21.03.220.B.1.

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2. The volume and type of sales (retail or wholesale) on the premises, and the size and type of items sold and nature of inventory on the premises.
3. Any processing done on the premises, including assembly, manufacturing, final production, warehousing, shipping, and distribution.
4. Any dangerous, hazardous, toxic, or explosive materials used in the processing on the premises.
5. The nature and location of storage and outdoor display of merchandise (enclosed, open, inside or outside the principal building); and predominant types of items stored (such as business vehicles, work-in-process, inventory and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders).
6. The type, size, height, and nature of buildings and structures.
7. The number and density of employees and customers per unit area of site in relation to business hours and employment shifts.
8. Transportation requirements, including the modal split for people and freight, by volume type and characteristic of traffic generation to and from the site, trip purposes, and whether trip purposes can be shared by other uses on the site.
9. Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses.

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10. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation, and fumes.
11. Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities.
12. The impact on adjacent properties created by the proposed use will not be greater than that of other uses in the zoning district.⁹

If the use is so unique that it does not fit within an existing use category, the Code prescribes a special procedure:

Atypical uses: Determination binding. If the director finds that the particular use or category of use(s) that was the subject of the use classification request **is of an unusual or transitory nature, or is unlikely to recur frequently**, the director may approve the use without initiating an amendment to this title. However, the director's determination shall thereafter be binding on all officers and departments of the municipality.¹⁰ (Emphasis added)

For reasons discussed below, the Use Classification should be overturned because it misclassifies the use and fails permit an accessory use that is permitted as a matter of right in R-10. Moreover, since the use is of a unique and unusual nature, had the Planning Director wanted to permit the use, he could have easily exercised his authority under AMC 21.03.220D.2. Rather the Planning Director went out of his way to reverse his department's precedent and prohibit the use.

⁹ AMC 21.03.220C.

¹⁰ AMC 21.03.220D.2.

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A. The Municipality misclassifies the use as a principal rather than accessory use.

When evaluating a use classification request, the first questions the Municipality ask per AMC 21.03.220C.1 are: what is the primary activity of the establishment and its relationship to existing use categories and use types? Said differently: (1) Is the use being evaluated a principal or accessory use and (2) what use category best fits the use (if any)?

A. Principal or Accessory Use.

Uses are either permitted, conditional, or prohibited, a determination that hinges on whether the use is “principal” or “accessory.”¹¹ Permitted uses are compatible with the main purpose of the district, exist independently of any other use of a property, and are allowed “by right”¹² – for example dwellings in a residential district, or retail stores in a business district. Prohibited uses are activities that the Assembly has found to be incompatible with the comprehensive plan and zoning district and are never allowed in a zoning district.

Accessory uses, on the other hand, may be permitted in a zoning district if they accompany a permitted principal use. It is impossible to have a permitted accessory use without a permitted principal use.¹³ A zoning district may prohibit a specific use as a principal use, but may permit it as an accessory use, and *vice versa*. For instance, a large domestic animal facility or beekeeping is a permitted *accessory* use to a principal residential use in residential zoning districts, but it is not a permitted principal use in those same districts.¹⁴ In other words, you can have a beehive in your backyard in certain neighborhoods, but you cannot buy a residential lot in that same neighborhood, tear down the house, and use the property for a commercial beekeeping operation.

AMC 21.05.07, the Code provision speaking to accessory uses, begins with the following purpose statement:

¹¹ AMC 21.05.070A.

¹² AMC 21.05.010.A.1.

¹³ AMC 21.05.070.A.

¹⁴ AMC 21.05.070 (Table 21.05-3 “Table of Permitted Accessory Uses”).

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Purpose. This section authorizes the establishment of accessory uses that are incidental and customarily subordinate to principal uses. An accessory use is "incidental and customarily subordinate" to a principal use if it complies with the standards set forth in this section.

This means that if a use is listed in AMC 21.05.070 and otherwise complies with the standards of that section (i.e. meets the zoning conditions and use-specific standards), then it is automatically considered "incidental and customarily subordinate." The Assembly already determined that owners of residential property are permitted as a matter of right to engage in these uses on their private properties.

AMC 21.05.070 includes a table of permitted accessory uses, which for owners of R-10 property includes but is not limited to: accessory dwelling units, bed and breakfasts, beekeeping, home occupations, gardening, large domestic animal facilities, and outdoor keeping of animals.¹⁵ Again, these are occupations and hobbies that by the adoption of Title 21, homeowners are permitted by to engage in by nature of owning property zoned R-10. If you're a homeowner and want to engage in that activity the Municipality doesn't get to scrutinize your motives or otherwise restrict your right to do so beyond enforcement of the general and use-specific restrictions.

a. The principal use of the Property is single-family residential.

The principal use of the Property is single-family residential. Any other conclusion is nonsensical. Mr. Applebury has resided in his home full-time since it was custom built for him almost two decades ago. Mr. Applebury receives the "owners primary residence" tax exemption and the home is appraised at \$862,600.

Mr. Applebury is an employee of United Airlines. Just as serving on this board is secondary to most member's professional obligations, being president of Moose Mamas is not Mr. Applebury's primary occupation. He serves as the president of Moose Mamas on a volunteer capacity. Locating the moose pens on the Property is a matter of personal interest and convenience, just like horse aficionados oftentimes prefer to keep their horses on their personal property rather than board them.

¹⁵ *Id.*

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The proposed use – the temporary outdoor keeping of moose calves—is seasonal and secondary to use of the Property as a single-family residence. The temporary nature of the use is even captured in the name of the ADF&G license: Temporary Possession – Orphaned Moose Calf Permit.

Accordingly, this Board should find the activity described – the temporary outdoor keeping of moose calves – is not the principal use of the Property but rather accessory and incidental to the principal single-family residential use.

b. The proposed use is most similar to the accessory use category of “large domestic animal facility” or “outdoor keeping of animals.”

AMC 21.03.220C.1 is a two-part question, and the Board must next consider the relationship of the proposed activity to existing use categories and use types. Looking at the zoning “district(s) involved” and “character of the uses specifically identified, and the character of the use(s) in question” under AMC 21.03.220C, does “the proposed use [have] an impact that is similar in nature, function, and duration to the other uses allowed in a specific zoning district[?]”¹⁶ What existing use category best fits the use (if any)?

Since at least 2018, the Municipality has found that the Moose Mamas use to be most similar to the “large domestic animal facility” accessory use.¹⁷ This accessory use category, or the “outdoor keeping of animals” both fit the described activity. The Municipality’s past decision is unsurprising the most true to Code.

The Planning Director noted in the Use Classification that:

[I]mpact to the neighborhood will be minimal. Vehicle trips to and from the site are limited to personal vehicles used to leave and return 2-3 times a day to bring fresh leaves and small branches for the moose calves to eat. The site is not open to the public. There will be no increase to noise; moose calves are

¹⁶ AMC 21.03.220C.

¹⁷ Large Domestic Animal Facility is not permitted as a principal use in R-6 or R-10. AMC 21.05.010 (Table 21.05-1).

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very quiet animals and any sounds are soft. Four caregivers live on site and are respectful of unnecessary noise. There will be no smell detectable from the facility. Moose calves have very small feces which does not have a strong odor. Feces is cleaned from the site throughout the day. There has been no indication that the enclosed moose calves attract predators, moose calves have very little odor, making it difficult for predators to find them. The electric fence, security cameras, and human activity on the site discourage any predator activity.¹⁸

Ignoring all of the above, the Planning Director then determined the use most closely fit the description of “animal shelter.” Code defines an “animal shelter” as:

A facility used to house or contain stray, homeless, abandoned, or unwanted animals and that is owned, operated, or maintained by a public or nonprofit organization devoted to the welfare, protection, and humane treatment of animals. This term shall not include residences where animals are fostered while awaiting adoption.¹⁹

While this category may on first-blush appear relevant to the Moose Mamas *mission*, one need only look at the zoning restrictions and use-specific standards to see that the characteristics of this use are opposites of the actual use. Unlike the “large domestic animal facility” or the “outdoor keeping of animals” uses, “animal shelter” fails to capture the defining characteristics – the nature, function, and duration – of the proposed use.

¹⁸ Use Classification at 1-2.

¹⁹ AMC 21.05.040. Notably, elsewhere in Code “*Animal rescue shelter* means a facility used to house four or more stray, homeless, abandoned or unwanted animals and that is owned, operated or maintained by an animal welfare organization, organization for the prevention of cruelty to animals, or other nonprofit organization, or by a person or persons devoted to the welfare, protection or humane treatment of animals, for the purpose of finding a permanent adoptive home.” AMC 17.05.010. Clearly Moose Mamas is not attempting to find “permanent adoptive home[s]” for the moose.

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First, animal shelters are only permitted in land zoned in industrial, and possibly with administrative site plan review in property zoned commercial. **Exhibit E** shows a map of industrial and commercial properties in Anchorage.²⁰ These are properties next to major roads and development. They are the antithesis of the rural and wilderness characteristics necessary to temporarily keep moose calves before reintroduction into the wild.

Indeed, the use-specific standard for animal shelters near residential districts contemplate that “[a]ll facilities, including all treatment rooms, cages, pens, kennels, and training rooms, **shall be maintained within a completely enclosed building.**” (emphasis added)²¹ The only exception for this is that “[a]reas for the care of large animals that are associated with *veterinary clinics* are exempt from this requirement[.]” (emphasis added).²² Code is silent as to the outdoor housing of animals in animal shelters not near residential districts, except to say that “outdoor runs” (i.e. the temporary place animals are released for exercise) must “be located on site and shall be screened from the view of all adjacent streets and properties by fencing or vegetation.”²³

When the drafters of Title 21 provided for animal shelters they clearly contemplated Animal Care & Control, the Humane Society and the SPCA adoption center; busy facilities with high levels of employee and patron vehicle traffic, housing small animals not intended to be kept outside in more natural environments. Animal shelters are never permitted as accessory uses in residential areas because the use is incompatible with residential neighborhood characteristics. Indeed, if anything in the definition fits Moose Mamas, it’s the carve out for foster homes: residences temporarily used to house animals before final placement.

Moose Mamas’ ability to operate largely unnoticed on the Anchorage Hillside since 2015 speaks directly to the fact that the use has an impact that is similar in nature, function, and duration to accessory uses allowed in residential areas. Indeed, since 2018, at the advice of the Municipality, adjacent neighbors actually volunteered their lot square footage

²⁰ The Anchorage 2040 Land Use Plan Map is attached in color and color copies will be provided at the hearing.

²¹ AMC 21.05.050B.2.b.i.

²² Id.

²³ AMC 21.05.050B.2.b.ii.

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for calculation purposes to allow Moose Mamas to keep a larger number of calves on site.²⁴ A neighbor does not volunteer to expand a nuisance. Correspondence from past neighbors attesting to the compatibility of the use in the Anchorage Hillside is attached as **Exhibit F**. The Moose Mamas facility is not open to the public.

By comparison, the use classification promoted by the Municipality for the past 7 years – “large domestic animal facility” — is much more analogous to the proposed use. That definition reads:

Definition. The **keeping**, harboring, riding, boarding, stabling, training, exercising, breeding, or related use **of four or more large domestic animals regardless of animal ownership, and the associated structure(s)** such as a paddock, stable, or barn. Operation of a large domestic animal facility is not a home occupation. (emphasis added).²⁵

The zoning and use-specific standards are directly applicable to the proposed use since the use is permitted as an accessory use in rural residential districts and permits outdoor pens. The use-specific standards, sent to Moose Mamas by the Municipality, are attached to **Exhibit A**. Truly, the only difference between the proposed use and the “large domestic animal facility” definition used to house other large ungulates is that the orphaned moose calves are not intended for domestication.

Moreover, there is another applicable use – the “outdoor keeping of animals” – that also appears on point with the proposed activity. Anchorage Municipal Code 21.05.070D.16.a defines the outdoor keeping of animals as the “restraining or restricting the movement of animals outside of a principal structure, by any means not involving the continued presence and/or participation of a human being.” Importantly, this provision does not limit the keeping of animals to domesticated animals, and similarly, the keeping of moose is not otherwise restricted under Code. The State, not the Municipality, regulates the keeping of moose, and Moose Mamas is expressly permitted to do so pursuant to the terms of their ADF&G license.

²⁴ AMC 21.05.070D.13.b.ii.

²⁵ AMC 21.05.070D.13. The definition is the same for the principal use under AMC 21.05.050B.3.a.

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The government doesn't get to deprive Mr. Applebury the right to engage in accessory uses enjoyed by other R-10 property owners – such as the “outdoor keeping of animals” – if his use otherwise meets the general and use-specific standards. Here, the proposed use meets the general standards under 21.05.070B and all applicable use-specific standards.

To the extent the Municipality believes the use does not meet those standards it has refused to provide any explanation of its rationale to the applicant. **Exhibit B.** Applicants seeking use classifications should not have to pay an appeal fee of \$1,130 for an explanation as to why a use category that objectively appears to fit the proposed use is inapplicable. This is particularly true where the Municipality abruptly reversed years of past-precedent. This new shift in administrative policy only serves to increase the number of use appeals heard by ZBEA and damages the reputation of a department previously respected for transparency in decision making.

The Board must evaluate the actual characteristics of use not just the mission statement. In doing so, the Board should reach the same conclusion that past Municipal planners have and permit the use under either the accessory use categories of “large domestic animal facility.” Alternatively, the Board could easily determine Mr. Applebury is entitled by right to use his property for “the “outdoor keeping of animals.”

d. The remaining use considerations under AMC 21.03.220C support the use of “outdoor keeping of animals” or “large domestic animal facility” not “animal shelter.”

The Municipal use classification form requires applicants submit responsive information for each of the twelve considerations. Moose Mama's application is attached as **Exhibit G.** As evidenced by those responses, many of the considerations are not applicable to the particular use being evaluated.

The Use Classification does not individually list out each of the twelve characteristics of use listed under AMC 21.03.220C and it is not the Municipality's practice to do so. Given the holistic nature of the first factor, many aspects of the remaining characteristics are woven into that analysis. To the extent that the remaining factors seeks

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to assess compatibility with adjacent uses (here all residential), the Use Classification made the following findings:

The proposed Moose Mamas facility at Shangri-La Circle provides shelters and a pen to ensure animal health and safety. Each calf is provided with adequate space to run freely and have adequate room for bedding. The holding pen for the moose is 70 x 80 feet in area and the fence is 8 feet high. The pen is surrounded by a three-tape electric fence.

...

The facility has no employees, but the Moose Mamas websites introduces several interns who work on site, in addition to the owners of the facility.

Information provided by the applicant indicates the impact to the neighborhood will be minimal. Vehicle trips to and from the site are limited to personal vehicles used to leave and return 2-3 times a day to bring fresh leaves and small branches for the moose calves to eat. The site is not open to the public. There will be no increase to noise; moose calves are very quiet animals and any sounds are soft. Four caregivers live on site and are respectful of unnecessary noise. There will be no smell detectable from the facility. Moose calves have very small feces which does not have a strong odor. Feces is cleaned from the site throughout the day. There has been no indication that the enclosed moose calves attract predators, moose calves have very little odor, making it difficult for predators to find them. The electric fence, security cameras, and human activity on the site discourage any predator activity.²⁶

These findings further support the use being compatible with residential use and classified as the accessory uses of either “large domestic animal facility” or “outdoor

²⁶ Use Classification at 1-2.

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keeping of animals.” To the extent the remaining factors were not considered by the Municipality they are irrelevant to this appeal, except to the extent it was error not to consider them.

II. CONCLUSION

It is this Board’s responsibility to assess which use category best captures the defining characteristics – the nature, function, and duration – of the proposed use. If the proposed use exactly matched an existing use category it wouldn’t require a use classification. Therefore, the Board must carefully consider the actual characteristics of use – daily activities, traffic impact, noise, compatibility with other uses in that zoning district – when determining what existing use category is most similar to the proposed use. Here, an owner’s temporary keeping of a small number of moose calves on their residential property is most like the keeping of other large ungulates or outdoor animals, both permitted accessory uses. Again, the site is not open to the public, does not have employees, and is a temporary holding location prior to final placement. If anything, the use more closely resembles a foster home than an animal shelter.

Moreover, given the unique nature of operations and the fact Moose Mamas is the only licensed facility of its kind in Anchorage, had the Planning Director wanted to permit the use, but felt the two accessory use categories discussed above inapplicable, he could have easily exercised his authority under AMC 21.03.220D.2 to approve the use simply by nature of being atypical. Rather, approximately a week after staff had yet-again approved the accessory use, the Planning Director instead elected to pick a use category that effectively prevents Moose Mamas from operating anywhere in the Municipality.

The Board should reverse and remand the Planning Director’s decision.

Sincerely,

ASHBURN & MASON, P.C.

s/Rebecca E. Lipson

From: "Calhoun, Sonnet L." <sonnet.calhoun@anchorageak.gov>
Date: May 25, 2022 at 1:24:48 PM AKDT
To: Dana DeBernardi <dana@moosemamas.org>
Cc: "Larson, Bradley J." <bradley.larson@anchorageak.gov>
Subject: RE: Zoning Moose Mamas

Hi Dana -

The use of your lot for raising moose calves is most similar to the Title 21 regulations for a large domestic animal facility. Your property at 6673 Shangri-La Circle is located within the R-10 zoning district. Your lot has an area of 97,655 square feet.

A large animal facility is a permitted use in the R-10 district. A minimum of 10,000 square feet per animal is required. With your lot size of 97,655 square feet you are permitted to maintain 9 animals. If you wish to exceed this number of animals, a conditional use permit is required. I am attaching the standards for a Large Domestic Animal Facility to this email for your reference. The requirement for an animal control facility license may not apply since moose are not domestic animals, but the permit from fish and game will suffice for that requirement.

If you would like additional information about the conditional use process for more than 9 animals, please let me know and I will get you in contact with one of our Planners who work with conditional use applications.

Sonnet Calhoun
Lead Land Use Reviewer
Municipality of Anchorage
Planning Department
907-343-8353
sonnet.calhoun@anchorageak.gov

-----Original Message-----

From: Dana DeBernardi <dana@moosemamas.org>
Sent: Wednesday, May 25, 2022 12:26 PM
To: Calhoun, Sonnet L. <sonnet.calhoun@anchorageak.gov>
Subject: Zoning Moose Mamas

[EXTERNAL EMAIL]

Good Afternoon Sonnet-

This is Dana with Moose Mamas. We were wondering how many moose calves we can temporarily hold at 6673 Shangri-La Circle without current land ownership of 2.5 acres. If we happen to receive more than 10 orphaned calves, what would we need to do in order to accept them as well?

Thank you so much for your time!

Dana DeBernardi
Founder/Chief Operating Officer
Moose Mamas
907-310-3650

[https://urldefense.com/v3/__http://www.moosemamas.org__;!!N9vJ2dmNYjWGSw!S489wfwyBqT-GvMqZTAtBK0THHqdbertzBs1bRthAZHPcpnsOSd1MGczgN3ms6nFJo4lwIP10Z276xRjwLzNIVQxg\\$](https://urldefense.com/v3/__http://www.moosemamas.org__;!!N9vJ2dmNYjWGSw!S489wfwyBqT-GvMqZTAtBK0THHqdbertzBs1bRthAZHPcpnsOSd1MGczgN3ms6nFJo4lwIP10Z276xRjwLzNIVQxg$)

13. Large Domestic Animal Facility (4 or more animals)

a. Definition

The keeping, harboring, riding, boarding, stabling, training, exercising, breeding, or related use of four or more large domestic animals regardless of animal

ownership, and the associated structure(s) such as a paddock, stable, or barn. Operation of a large domestic animal facility is not a home occupation.

b. Use-Specific Standards

i. Lot Size

The minimum lot size for a large domestic animal facility of four animals is 40,000 square feet. An additional 10,000 square feet is required for each animal over four. Application for an administrative variance from the minimum lot size may be made to the department pursuant to subsection 21.03.240J.

ii. Adjacent Lots

Adjacent lots may be used in square footage calculations for site size only. If the adjacent lots are not under single ownership, the lot owners shall submit a recorded joint usage agreement for review and approval by the director. In such cases, setback requirements shall not apply to the interior lot lines between the applicable lots, and a primary use need not be located on the adjacent lot.

iii. Setbacks

Notwithstanding the setbacks of the underlying zoning district, covered structures associated with a large domestic animal facility, such as a stable or barn, shall be set back at least 25 feet from any abutting lot line, not including interior lot lines between lots in common ownership. Uncovered enclosures shall meet one of the following setback options:

(A) Seventy-five feet from residences existing on February 28, 2006, not including any residence in common ownership with the large domestic animal facility; or

(B) Ten feet from any abutting lot line, not including interior lot lines of lots in common ownership, if the separation area is vegetated with L2 buffer landscaping.

iv. Structures

The square footage of any single large domestic animal facility structure shall not exceed 10 percent of the lot size, up to a maximum of 8,000 square feet.

v. Fences

Barbed wire shall not be used for fencing of any large domestic animal facility.

vi. Commercial Activity

Commercial activity associated with large domestic animal facilities, such as boarding or riding lessons, is permitted.

vii. Other Requirements

Large domestic animal facilities shall:

- (A) Meet the requirements of AMC chapter 15.20 regarding animal waste, AMC subsection 15.55.060B. concerning separation requirements from water supply wells, and section 21.07.020 concerning stream protection setbacks;
- (B) Obtain an animal control facility license;
- (C) Obtain an approved animal waste management plan from the Municipality of Anchorage, Watershed Management Services; and
- (D) Comply with licensing and other laws concerning the keeping of animals as set forth in AMC titles 15, 17, and 21.

- c. ***Large Domestic Animal Facilities That Do Not Meet These Standards***
Large domestic animal facilities that exceed the use-specific standards listed above for site area, structure size, or number of animals, may be allowed by conditional use, pursuant to subsection 21.03.080.

Adalea Wyckoff

From: Arms, Quincy H. <quincy.arms@anchorageak.gov>
Sent: Monday, June 20, 2022 10:28 AM
To: Becky Lipson; Heidi Wyckoff; dana@moosemamas.org
Cc: Lyon, Craig H.; Calhoun, Sonnet L.; Whitfield, David R.
Subject: RE: Moose Mamas Appeal

Hi Becky, thanks, it's been a beautiful summer. Planning has issued its determination that the use as described most closely fits an animal shelter. If you want to get in to the specifics of why your client believes there is a more appropriate determination, the appeal is your best route.



Quincy Hansell Arms
Assistant Municipal Attorney
Municipality of Anchorage
632 W.6th Avenue, Suite 730 Anchorage, Alaska 99501
(907) 343-4574
armsq@muni.org
www.muni.org/Departments/Legal/

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From: Becky Lipson <becky@anchorlaw.com>
Sent: Sunday, June 19, 2022 1:19 PM
To: Arms, Quincy H. <quincy.arms@anchorageak.gov>; Heidi Wyckoff <heidi@anchorlaw.com>;
dana@moosemamas.org
Cc: Lyon, Craig H. <craig.lyon@anchorageak.gov>; Calhoun, Sonnet L. <sonnet.calhoun@anchorageak.gov>; Whitfield,
David R. <david.whitfield@anchorageak.gov>
Subject: RE: Moose Mamas Appeal

[EXTERNAL EMAIL]

Hi Quincy,

I hope you're having a good summer so far. Can you please explain why the use does not fit within the "outdoor keeping of animals" accessory use category?

Thanks,
Becky

Becky E. Lipson
Ashburn & Mason, P.C.
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501

Phone: (907) 276-4331

Fax: (907) 277-8235

becky@anchorlaw.com

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From: Arms, Quincy H. <quincy.arms@anchorageak.gov>

Sent: Thursday, June 16, 2022 5:45 PM

To: Becky Lipson <becky@anchorlaw.com>; Heidi Wyckoff <heidi@anchorlaw.com>; dana@moosemamas.org

Cc: Lyon, Craig H. <craig.lyon@anchorageak.gov>; Calhoun, Sonnet L. <sonnet.calhoun@anchorageak.gov>; Whitfield, David R. <david.whitfield@anchorageak.gov>

Subject: RE: Moose Mamas Appeal

Hi Becky, sorry for the delay. We've considered your arguments but stand firm in the determination that the use proposed by Moose Mamas is an animal shelter, and not otherwise permitted as an accessory use. Getting the use determination revised on appeal is the only way to permit Moose Mamas to operate at that location.



Quincy Hansell Arms

Assistant Municipal Attorney

Municipality of Anchorage

632 W.6th Avenue, Suite 730 Anchorage, Alaska 99501

(907) 343-4574

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www.muni.org/Departments/Legal/

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From: Becky Lipson <becky@anchorlaw.com>

Sent: Wednesday, June 15, 2022 3:46 PM

To: Calhoun, Sonnet L. <sonnet.calhoun@anchorageak.gov>; Whitfield, David R. <david.whitfield@anchorageak.gov>

Cc: dana@moosemamas.org; Heidi Wyckoff <heidi@anchorlaw.com>

Subject: Moose Mamas Appeal

[EXTERNAL EMAIL]

Hi Dave and Sonnet,

I hope this email finds you well and enjoying the beautiful summer weather. Dana with Moose Mamas reached out to our firm after receiving the June 8th use classification letter. I'm not sure if you're aware of the timeline of the program, but we've got a very narrow window of time to save this year's calves. The operating season is from end of May until August/end of September. Therefore, while we can appeal the use classification, I'm hoping we can also discuss interim solutions.

The principal use of 6673 Shangri-La Circle is single-family residential. The MOA appraises the current home at over \$800k and its owner occupied, so I'm hoping that we can all agree residential is the principal use. This is especially true

considering the temporary/secondary nature of the moose-related use. If you disagree please let me know and we can provide supplemental information demonstrating the principal use.

Therefore, what we're really discussing is whether the seasonal moose rehabilitation use at issue is a permitted accessory use to that principal residential use. The June 8th use classification correctly states that animal shelter is not a listed accessory use in Table 21.05-3, but then again Table 21.05-3 contains some uses listed in Table 21.05-1, and some uses not listed in Table 21.05-1. Notwithstanding the arguments we're prepared to make as to why "large domestic animal facility" is more appropriate for this situation than "animal shelter", the accessory use would seem to me to fall squarely within the "outdoor keeping of animals" accessory use category, which is a permitted accessory use in R-10 subject to the accessory-use restrictions set forth in AMC 21.05.070.D.16. Please let me know if you agree that this use may be applicable, or if not, why you disagree.

Moose Mamas is prepared to appeal the use classification, but before I initiate that process (and the associated procedural/substantive work that filing will trigger for the Planning Department), I wanted to reach out regarding the above. If the Planning Department is willing to reconsider the request as an accessory use and toll the appeal timeline please let me know, otherwise I'll simply file the appeal and go through that process.

From a timing perspective, the cutoff date for receiving moose calves is the first week of July (Dana can correct me if I have that date wrong). Since Moose Mamas is the only Fish & Game licensed facility in Anchorage and there are no other facilities that have space to accept calves (again, Dana correct me if I'm wrong), the only option will be to euthanize the calves that would've been taken in this year. Therefore, not only would I like to try to resolve this before the June 28th appeal deadline to avoid an unnecessary appeal, but if any animals are going to be saved this year we need to act quickly.

I am planning on set-netting on the Kasilof tomorrow and Friday, but I will have my cell phone (847-682-0822) and will be checking email so I'd be more than happy to get on a call or discuss over email.

I look forward to hearing from you.

Best,
Becky

Becky E. Lipson
Ashburn & Mason, P.C.
1227 W. 9th Ave., Ste. 200
Anchorage, AK 99501
Phone: (907) 276-4331
Fax: (907) 277-8235
becky@anchorlaw.com

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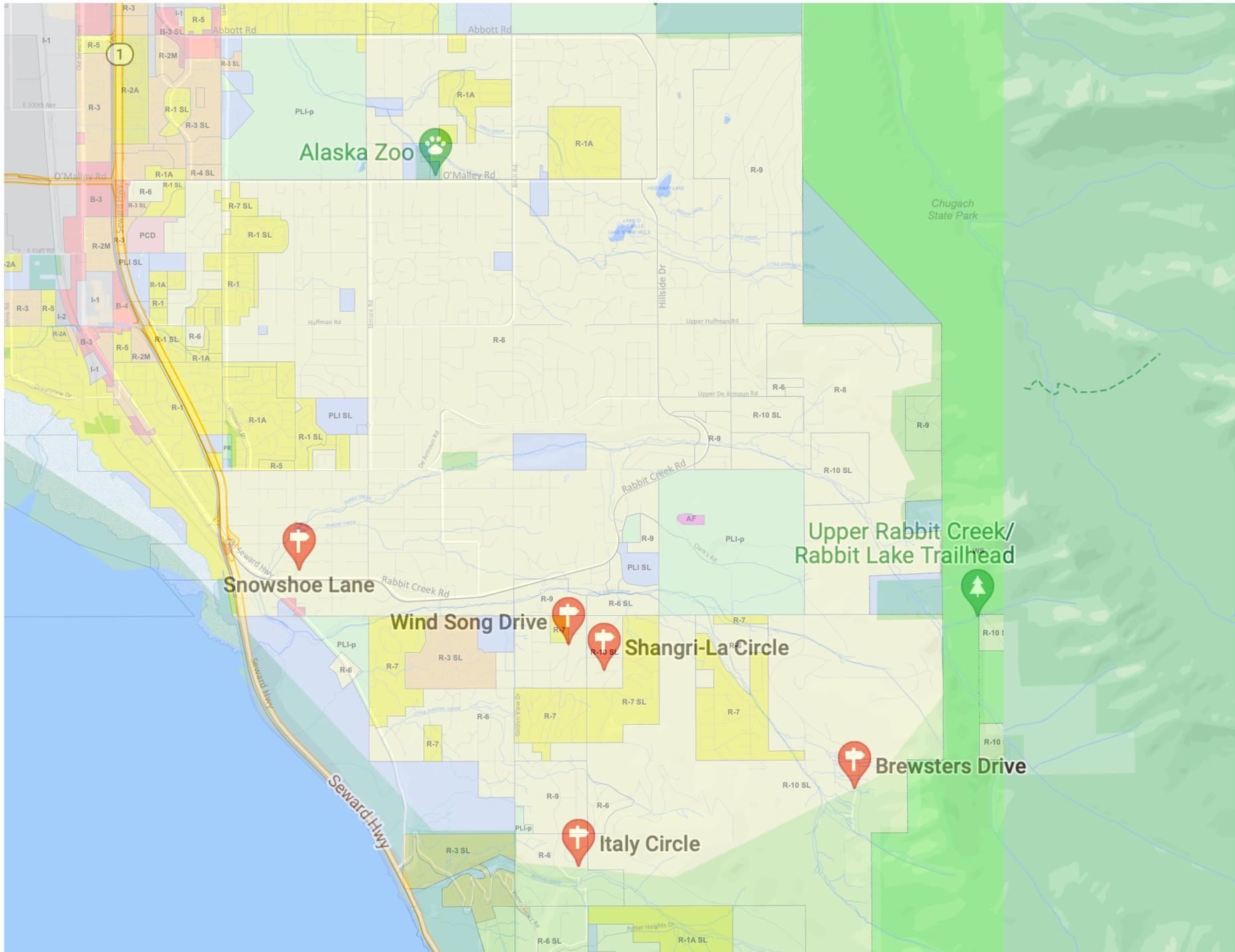










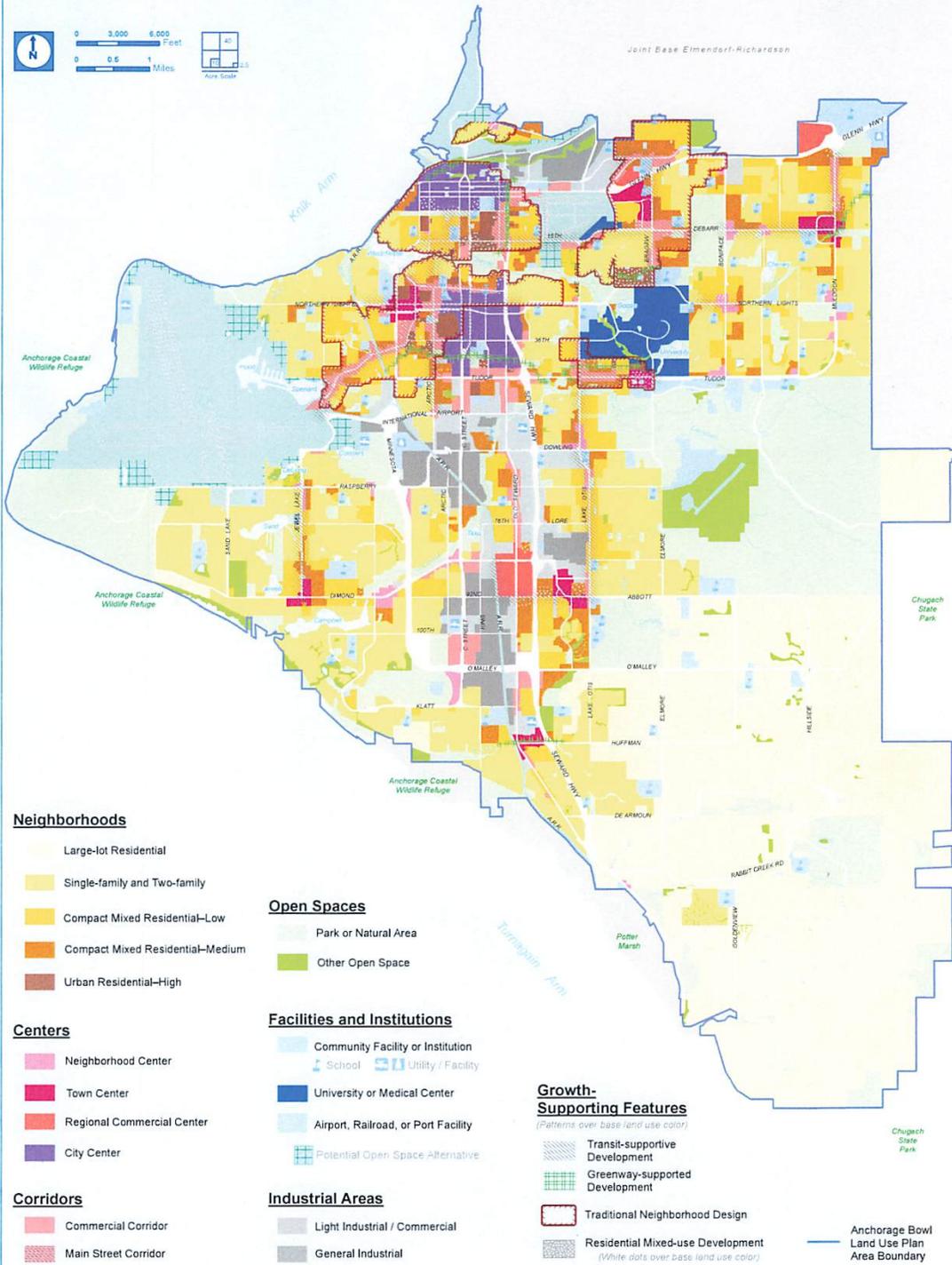


Anchorage 2040 Land Use Plan Map

A Supplement to the Anchorage 2020 Comprehensive Plan

Anchorage 2040
Land Use Plan

As Adopted by AO 2017-116
September 26, 2017



This map is a part of Section 2 of the Anchorage 2040 Land Use Plan narrative. Section 2 of the Plan provides definitions and guidance regarding the land use designations and other features on this map.

1/10/2018 land_use_plan_map_11x17.mxd



Snowshoe neighbors

Susanne Comellas <susanne1ak@gmail.com>
To: Dana@moosemamas.org

Hi Dana,
Greetings from your neighbors to the north on Snowshoe. We just wanted to let you know how sad we are that you moved. We will miss Moose Mamas and their beneficiaries.

Never once were we disturbed or had any problem or complaint about your presence in our quiet neighborhood. We appreciate your mission and your willingness to protect and preserve our local wildlife. You are truly an example of a splendid way of life in Alaska, unique, challenging and a beautiful example of what we can do when we see a need. A great example for all.

Moose Mamas is a truly an Alaskan/ American free spirited endeavor, one I will never forget and will miss in my life.

Best of luck,

Ralph and Susanne Comellas
907 830-5288

To Whom It May Concern

We are former neighbors that lived next to the Moose Mamas Facility. We would like to take this opportunity to express our support for Moose Mamas. We hereby want to address the impact the Moose Mamas Facility has had on our neighborhood, along with alleviating some concerns you may have.

Because of the size of our lots, typically 2 ½ acres or more, the Moose Mamas Facility is hidden from public view and we only knew about it because the Moose Mamas Director told us out of courtesy. It was a pleasure to have this facility next to our property. Moose Mamas did not bring increased noise or traffic. We did not recognize any increased predator activity nor did we notice any increased smell from the moose calves. We appreciate what Moose Mamas does for these calves and support their efforts. We feel privileged that we lived close to their facility and formed a lasting relationship with the Moose Mamas Director, Dana DeBernardi. Dana, along with her interns, work very hard to care for the calves, keep the facility clean, and make sure the calves, interns, and neighborhood is safe. We considered it a benefit to our neighborhood community. Although we are happy that they found a permanent location, we will miss having them next to us. Moose Mamas is a benefit to the State of Alaska, as well as a personal blessing to our neighborhood.

Casey (Kachaw) Miller - 907-529-1778

Anna Schuleran 907-632-5373

Keith Johnson 907-240-9212 (Please contact me)

Jamara Dohmen 907-441-9360 (you can contact me as well)

Joel Cladonhos

907-244-2123 (PLEASE CALL OR EMAIL)
joelcladonhos@gmail.com

Anjum Masoud

907-444-6763 (Please Call or Email)
anjummasoud@gmail.com

Nancy Arrington 907-229-2034 Call or Text

Anita D. Flinn 907-940-0125

USE CLASSIFICATION INFORMATION REQUIRED (MOOSE MAMAS)

STATE IN DETAIL THE PROPOSED PRIMARY ACTIVITY OF THE ESTABLISHMENT

To temporarily hold orphaned moose calves from birth to 4 ½ months and then release them in a remote area.

PROVIDE INFORMATION ABOUT SALES (RETAIL OR WHOLESALE). THE SIZE AND TYPE OF ITEMS SOLD AND THE NATURE OF INVENTORY ON THE PREMISES

This is a nonprofit temporary animal facility. Nothing sold

PROVIDE INFORMATION ABOUT PROCESSING, INCLUDING ASSEMBLY, MANUFACTURING, FINAL PRODUCTION, WAREHOUSING, SHIPPING, AND DISTRIBUTION

This is an animal nonprofit organization

PROVIDE INFORMATION ABOUT DANGEROUS, FLAMMABLE, TOXIC, REACTIVE, OR OTHERWISE HAZARDOUS MATERIAL TO BE USED OR SHORED ON SITE

None

DISCUSS THE NATURE AND LOCATION OF ANY STORAGE AND OUTDOOR DISPLAY OF MERCHANDISE, AND PREDOMINANT TYPES OF ITEMS STORED

None

STATE THE TYPE, SIZE, AND HEIGHT AND NATURE OF BUILDINGS AND STRUCTURES

We have a temporary 70'x80' chain link fenced area and a 6'x6' movable medical shed

STATE THE NUMBER AND DENSITY OF EMPLOYEES AND CUSTOMERS PER UNIT OF SITE IN RELATION TO BUSINESS HOURS AND EMPLOYMENT

We don't have any employees

PROVIDE INFORMATION ABOUT TRANSPORTATION REQUIREMENTS, VOLUME TYPE AND CHARACTERISTIC OF TRAFFIC GENERATED TO AND FROM THE SITE, TRIP PURPOSES, AND WHETHER TRIP PURPOSES CAN BE SHARED BY OTHER USES ON SITE

We leave and return 2-3 times a day in order to bring fresh leaves and small branches for the moose calves to eat.

PROVIDE PARKING REQUIREMENTS, TURNOVER AND GENERATION, RATION OF THE NUMBER OF SPACES REQUIRED PER UNIT AREA OR ACTIVITY, AND THE POTENTIAL FOR SHARED PARKING WITH OTHER USES.

We only have our personal vehicles

PROVIDE INFORMATION ABOUT THE AMOUNT AND NATURE OF ANY NUISANCES GENERATED ON THE PREMISES, INCLUDING BUT NOT LIMITED TO NOISE, SMOKE, ODOR, GLARE, VIBRATION, AND FUMES

No known nuisances

PROVIDE INFORMATION ABOUT ANY SPECIAL PUBLIC UTILITY REQUIREMENTS FOR SERVING THE PROPOSED USE, INCLUDING BUT NOT LIMITED TO WATER SUPPLY, WASTEWATER OUTPUT, PRE-TREATMENT OF WASTES AN EMISSION REQUIRED OR RECOMMENDED, AND ANY SIGNIFICANT POWER STRUCTURES AND COMMUNICATIONS TOWERS OR FACILITIES

None

LIST ANY IMPACTS ON THE ADJACENT PROPERTIES CREATED BY THE PROPOSED USE

Created a defensible space against fires