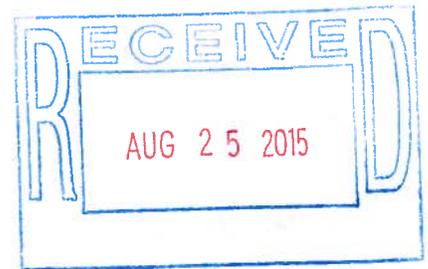


August 24, 2015

Angela Toman
834 Sheets Road
Buckley, WA 98321

**RE: Conditional Use Permit CUP# 2014-03
Brookstom LLC**



Dear Ms. Toman:

Transmitted herewith is the Report and Decision of the City of Buckley Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/jjp
cc: Parties of Record

OFFICE OF THE HEARING EXAMINER

CITY OF BUCKLEY

REPORT AND DECISION

CASE NO.: Conditional Use Permit CUP# 2014-03
Brookstom LLC

APPLICANT: Angela Toman
834 Sheets Road
Buckley, WA 98321

PLANNER: Kathy Thompson, City Planner

SUMMARY OF REQUEST:

Conditional use permit approval to allow a Commercial Recreation use for eight to ten hour weekend and holiday events. The use will include an outdoor tent (40 x 60 feet) screened by Leyland cypress trees along Sheets Road and 70 parking spaces on a gravel surface adjacent to a 24 foot wide, gravel driveway. The site is located at 834 Sheets Road, Buckley, and is a portion of the NE ¼ of the SE ¼ of Section 11, Township 19N, Range 6E, Pierce County, Washington. Parcel number: 0619111039.

Appeal of the SEPA threshold Mitigated Determination of Nonsignificance issued for the project.

SUMMARY OF DECISION: Request granted, subject to conditions.
Environmental Appeal denied.

DATE OF DECISION: August 24, 2015

PUBLIC HEARING:

After reviewing the Planning Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on July 6, 2015, at 2:56 p.m. and ended at 4:58 p.m. The hearing was reopened on August 3, 2015 at 3:00 p.m. and ended at 4:32 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Planning Department Staff Report with Attachments
- EXHIBIT "2" - Environmental Noise Study
- EXHIBIT "3" - Letter from Bob and Janice Pacific dated May 12, 2015
- EXHIBIT "4" - Letter from Marvin and Sandra Sundstrom dated May 12, 2015
- EXHIBIT "5" - Letter from Connie Bender with Attachment
- EXHIBIT "6" - Email from Erik Miller-Klein dated June 25, 2015
- EXHIBIT "7" - Miscellaneous Emails
- EXHIBIT "8" - Notice of Public Hearing
- EXHIBIT "9" - Ordinance No. 12-15
- EXHIBIT "10" - Letter from Christopher and BettyJo Rankin dated July 3, 2015
- EXHIBIT "11" - Order of Clarification from HEX dated June 23, 2015
- EXHIBIT "12" - City of Buckley Power Point
- EXHIBIT "13" - Applicant Power Point
- EXHIBIT "14" - Letter from Marnie Hayes
- EXHIBIT "15" - Letter from Karen and Glen Johnston
- EXHIBIT "16" - Marvin Sundstrom Comments
- EXHIBIT "17" - Janice Pacific Comments
- EXHIBIT "18" - Connie Bender Submittal
- EXHIBIT "19" - Executive Summary
- EXHIBIT "20" - Staff Report on SEPA Appeal
- EXHIBIT "21" - Establishing Mapped Zones and Regulations Therein
- EXHIBIT "22" - Email from Kathy Thompson dated July 9, 2015
- EXHIBIT "23" - City Response to SEPA Appeal dated July 13, 2015
- EXHIBIT "24" - Letter from Bill Diamond dated July 7, 2015
- EXHIBIT "25" - Email from Dom Miller dated March 16, 2015
- EXHIBIT "26" - Memorandum from HEX dated July 23, 2015
- EXHIBIT "27" - Memorandum from HEX dated July 29, 2015
- EXHIBIT "28" - Email from Connie Bender dated July 28, 2015
- EXHIBIT "29" - Supplemental Staff Report dated August 3, 2015
- EXHIBIT "30" - Letter from Wayne McBroom dated August 2, 2015
- EXHIBIT "31" - Connie Bender Response with Attachments
- EXHIBIT "32" - North Rainier Elk Herd Plan
- EXHIBIT A - Map of Herd Plan
- EXHIBIT B - Map of Herd Plan
- EXHIBIT "33" - Vehicle Parking
- EXHIBIT "34" - City of Buckley Power Point Response
- EXHIBIT "35" - Bob Pacific Response
- EXHIBIT "36" - Marvin Sundstrom Response

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

July 6, 2015, Hearing.

KATHY THOMPSON appeared, presented the City Staff Report, and testified that County maps show that wetlands cover the site, but the applicant has presented two reports that show no wetlands. A wetland does exist off-site to the north. The Spiketon Ditch is on private property but was created by the City. The applicant gave an easement to the City 2.5 feet wide as measured from the top of the bank on each side of the ditch for maintenance purposes. The code requires a 25 foot wide setback from the easement. A timely appeal of the SEPA threshold determination was filed. The project includes a 12 foot high tent buffered by a hedge. The site will have a park setting appearance from Sheets Road. The project does not meet the definition of a temporary use, but is a permanent use with the tent raised and lowered periodically. The applicant proposes no lighting as activities will occur during the daylight hours. Sheets Road is not deficient and can serve the business pursuant to the City engineer, the fire department, and the police department. The question for the conditional use permit is compatibility. The City zoned the site as residential in 2005 or 2006. However, the area has always been part of the City since its incorporation in 1889 and was consistently zoned for residential uses. The Noise Report confirms that the use will cause no sound at the property lines.

BOB BROOKS and ANGELA TOMAN, applicants, appeared and testified that the project complies with City Comprehensive Plan policies. They want to provide a location for weddings and other party events, retreats, etc. They were approached by developers who wanted to improve the site with housing, and they also looked at a marijuana farm but opted for the present application. They had options for other uses as well. Their families have lived here for 80 years and they themselves are long time residents. They want to create a park-like atmosphere with the development. Buckley presently has no place to accommodate meetings, and they felt this particular use was better than developing the entire site. They would provide a local option for meetings. The area is not totally residential as six businesses exist within one mile. Other property owners are utilizing their parcels for commercial uses. They meet or exceed all code criteria. They propose to operate from a tent 13 feet, eight inches in height, and trees will block views of the tent in two years. They will have a preset sound system and a DJ will provide music using said system. They will have walls on three sides of the tent to mitigate music noise. They do not plan to have live music and they agree to a condition prohibiting amplified, live music. They will live on the site and do not want a lot of noise or improper activity. They will provide a phone number for neighbors to contact them in case of problems.

MARVIN SUNDSTROM appeared and read his remarks into the record. He resides across the street from the site and does not object to social gatherings in a residential zone. This site is within an urban density area and serves as a transition area to the R20 larger lots.

The Parks and Recreation Plan does not allow the proposed use. Other homeowners use their lots for residential or subordinate businesses. County maps show wetlands on the site and water is still running from the wetland. The business will mean commercial vehicles, gravel and paved driveways, and gravel parking areas. Sheets Road has very little traffic at present. The Buckley Municipal Code limits noise to 50 feet from the source. The Buckley Municipal Code allows 50 dB(A) which is a very low number and hard to stay under. People who reside in the area have chosen an area with less services.

JANICE PACIFIC appeared, presented a power point presentation, and testified that they found wetland species on the site. The area is one of small, family farms. Sounds reverberate from the hills to the south and west. They hear swimming pool noise and voices from a long way off, and the area is also an elk winter range. She questioned the difference between a social gathering and recreation. Sheets Road is only 18 to 20 feet wide. She works for DNR and her husband works for the U.S. Forest Service. Two cars cannot pass on Sheets Road without issues. Sheets Road also supports pedestrians and horses. One must carefully ride a horse on Sheets Road and drivers must be aware of both animals and people. The wetness of the area is demonstrated by swamp grasses and stuck vehicles. She presented a photograph of a Great Blue Heron taking off from the site. The road has no striping or shoulders. The driveway serving the site will be wider than Sheets Road.

CONNIE BENDER appeared and testified that she can hear sounds from her neighbor's property way down the road. She hears children playing. She agrees with the previous speakers. The site is a critical area for elk. They are not allowed to use all of their property due to that fact. She referred to the Municipal Code and Fish and Wildlife Habitat Conservation Area. She questioned whether endangered wildlife is present on the site and whether there are critical or sensitive species on the site. No one has provided an answer. She saw an eagle and chicks, hawks, a lynx, a peregrine falcon, and a pond turtle. However, nothing is shown as to how this use will preserve habitat. Geese and duck nest on the site and elk calving occurs in May and June. Deer also are on the site. The wildlife will leave if this project goes in. The wildlife needs quiet. She anticipates between 20 and 300 people running around outside. The site will become party central every weekend. They want to enjoy life on the weekends and holidays without noise. The proposed arbor vitae won't grow very fast, and the Leland cypress won't grow for a couple of years until the roots are established. Their view of the hillside will be ruined. The project is not compatible and does not fit with the area. There is no way to mitigate the impacts of increased traffic. Seventy vehicles will create a significant impact. Trucks will bring the rented material in and out. Drivers cannot get onto Ryan Road when the State school lets out. A bus stop is there also. The State school runs seven days per week. At the end of the road at SR-410, the intersection is a problem as well. She questioned whether the 50 dB(A) included customer noise. Will all of the customers remain inside the tent? If so, they can't enjoy the property outside, and then there is no reason to have the use at this location.

MR. BROOKS and MS. TOMAN reappeared and testified that they exceed the storm drainage requirements for the parking area and will not create erosion. The road is narrow but their parking area is wide. The fire department and police department indicate there are no EVA issues. They plan to have parking attendants monitor the road and will stagger cars to reduce the number leaving at any one time. People leave at various times as from a school. The drainfield is located near the house and the project will not affect it. They can accommodate 150 people maximum with the 70 parking stalls. They could have gone down to between 40 and 70 attendees, but want a 100 maximum for the proposal. Most events will attract less than 30 people. Concerning the lighting issue, they will put in directional lighting that will only face toward the hillside. The trees are fast growing species per their label. They bought six to seven foot tall plants and will do the same next year. One slide was incorrect as they propose .68 acres of the parcel for the entire project. The tent will have a black and white color. The property on the other side of the street has the same size structure as their tent. Their house is the last on the left side of Sheets Road and there is one house beyond on the right. The tent measures approximately 380 feet from the road. They will utilize port-a-potties and will have no kitchen. They enjoy looking at wildlife also. They will use the tent only on weekends and it will not disrupt the wildlife. The project is in the central area of the property.

MS. THOMPSON reappeared and testified that the applicants must follow all conditions of approval and the DNR and DFW will advise as to wildlife restriction on the site. If lynx and falcon habitat is on the site, they are a protected species through DFW.

MS. PACIFIC reappeared in support of her SEPA appeal. She works with NEPA and SEPA and the process in the present case is unclear. The threshold determination doesn't adequately address her issues or concerns. The SEPA checklist either changed, or the applicant did not answer the questions. The second MDNS issued provides less mitigation. The MDNS was issued before the City received the SSA Noise Report. A fire engine can't get through 70 cars. Dense vegetation does not stop sound.

MS. BENDER reappeared and testified that questions were omitted from the checklist, which is the reason for their appeal. Some answers just don't respond to the questions. The site is a migration route and the applicant has not provided complete answers regarding wildlife.

ERIK MILLER-KLEIN, acoustical engineer, appeared and testified that the area is very quiet and that the 50 dB(A) sound level is not applicable. The project will not exceed the existing, very quiet, background noise. He agrees that vegetation does not mitigate noise and they do not provide vegetation for noise mitigation. Cars, lawnmowers, and other area noises provide the background noise. The project will contribute noise of about 40 dB(A) which is lower than the existing background noise, and therefore will not be heard. Upon questioning by Ms. Bender, Mr. Miller-Klein testified that the dB(A) is measured at the property line. Ms. Bender responded that the Municipal Code requires it measured at 50 feet from the source.

MS. THOMPSON reappeared and testified that the previous zoning was RA. The City used the standard checklist for the SEPA review. The process described by appellants is unfamiliar. She noted no issues with traffic and the police and fire did not identify any issues regarding access. Applicable City plans consider the use compatible. The City does not require a new application when the proposed use is not changed. The City would require a new application if an applicant proposes a new use. The City does not ask for a new application as a project evolves. They review about every 45 days. The hours of operation are unclear in the checklist, but Condition 4 makes the hours very clear, noon to sunset, that would vary depending on the time of year. They will operate Saturday, Sunday, and holidays as shown in D and E.

MS. PACIFIC then discussed the SEPA checklist with Ms. Thompson and determined that the City used the wrong SEPA checklist as it did not have the most recent one from DOE. The proposed slab beneath the tent is permanent.

August 3, 2015 Hearing.

KATHY THOMPSON appeared and testified that the City attorney reviewed the comments received at the previous hearing, and found no reason for the City to change its recommendation. Pursuant to Dom Miller's comments, she has determined the weekend begins after 6:00 p.m. Friday evening and therefore includes Friday evening events. She also recommends that the business operate from noon to sunset. The City engineer also recommends noon to sunset. Holiday operation will be limited to the holiday itself. She then introduced Exhibits 32, 32A and 32B, the Elk Herd Plan, which does not include the City of Buckley within its boundary. The plan recognizes that certain losses will occur.

ANGELA TOMAN appeared and testified that they propose to operate between May 1 and October 31 each year and that the tent will remain up during those periods and will be removed by October 31. They would like to operate eight to ten hours per day maximum but have switched proposed hours from noon to 9:00 p.m. with one hour for cleanup. No public egress will occur during the cleanup as it will be limited to approximately six people maximum. Some events will not need a cleanup. They have designed the project to eliminate impacts of automobile headlights. They will plant cypress trees and fence the area of vehicles.

BOB BROOKS appeared and introduced Exhibit 33, a colored rendition of the site plan.

JANICE PACIFIC appeared and introduced Exhibit 34, a power point presentation and questioned where the business portion of the business will occur. Even with the vegetative buffer, they will know when people are coming and going. What about car shows? Where will people park? Mr. Miller limited the site to one event per day and meant Saturday and Sunday. The hours of operation are for Saturdays and Sundays. Sheets Road dead ends and therefore only one way in and out exists. She then showed photographs of a recent car show and vehicles clogging the road.

BOB PACIFIC appeared and presented Exhibit 35, his comments, into the record.

CONNIE BENDER appeared and testified that she resides at the corner of Ryan and Sheets. Concerning Mr. Diamond's letter, Sheets is not an arterial road and County residents also access their homes via Sheets, a dead-end road. She took her daughter out on her bicycle and traffic did not slow or watch for kids. There is no room to turn their bikes around on the road. People who don't live there will come to the celebrations and won't look out for the neighbors. She sees no proof that traffic will leave in small spurts. If they all leave at once, there will be a large blockage on the road. Concerning noise, 9:00 p.m. is late for many people to include school children. The cleanup until 10:00 p.m. will involve flood lights. It is not compatible with the area. The site does not contain enough room or area for the use as it is too close to existing houses. It is 250 feet to the nearest neighbor and noise will carry. If Fridays are allowed before a Monday holiday, then they could have events four days in a row. Traffic and noise impacts family activities on the weekend. They are requesting carte blanche for anything legal that could be up to 300 + people. A huge mess occurred on the road this past weekend. If the property does not contain wetlands, why were cars stuck? They now propose a hard pack surface that can be lined. Will water run into the ditches and carry car leakage there too? She questioned the police and fire responses. If three to four cars back up at the stop sign, a fire truck cannot get down the road. They presently experience a lot of traffic on Saturdays and Sundays when the events will occur. They will not know when events will occur and whether they can plan around them.

JAY ERICKSON who resides on Sheets Road testified that he moved here three years ago and likes the quiet. He lives here even though it requires a one hour commute to work each direction. The proposal will negatively impact him. In good weather he enjoys being outside and noise is his main objection. Traffic and headlights do not cause a problem. He hears people at the applicant's place now. The proposed hours of operation are during the times he likes to be outside.

SILVIA TESTA appeared and testified that she lives on the opposite side of Sheets Road from the property in question. She emphasized that the neighbors want peace and quiet.

MARVIN SUNDSTROM appeared and testified that this use should occur on a place like the Kelly Farm that has 140 acres. This is an 11 acre parcel that will have the same impacts as events held at the Kelly Farm. He objects to its approval and testified that he is a City Council member.

MR. BROOKS appeared and testified that other uses such as the high school have only one way in and out. This past weekend the event with the car show did not concern their business. Their uncle asked about a car show and unbeknownst to them utilized the street. They will have an engineered parking lot and no parking will occur on the street or on grass. They will provide traffic monitoring of events and will ensure parking does not occur on the street. They are providing more than the number of stalls needed. No runoff to the ditch will occur. The groundcover is gravel and not impervious, and they will utilize

temporary markings for car stalls. They will provide a posting of upcoming events on the road or on their property as well as the type of event. They recognize that they can only run events for a couple of hours Friday evening.

MS. TOMAN appeared and testified that they made changes from their original SEPA application in November, 2014. These changes were mailed to all and all were provided notice. They did not change the project. The only change was to eliminate vehicle parking on grass. They have clarified their proposal for everyone and have been up front on everything.

DOM MILLER, professional engineer, Gray and Osborne, testified that the City engages his company to perform engineering functions for the City. The City does not require a Traffic Impact Analysis (TIA) unless a project generates more than 25 peak hour vehicle trips or 250 average daily trips. Exceeding either threshold requires a TIA. The applicant proposes 70 stalls and he has computed vehicle trips as one trip in and one trip out, or 140 average daily trips. Even if we added 25 trips for the setup and take down, the total trips will be well below 250 ADT. This is the reason that he limits the use of the site to a single event in a day. The 25 vehicle trips during the peak hour is a default mode. The peak hour is deemed to occur Monday through Friday over a two hour period. If a project adds more than 25 trips during these hours, then a TIA is required. Also, local conditions can be considered. In the present case, the threshold for either average daily trips or p.m. peak hour trips is not met. This is why the applicant cannot operate between 4-6 p.m. on Fridays as they need to avoid the 25 peak hour trip threshold. His definition of weekend is Saturday and Sunday. The Diamond response was not anticipated. Concerning storm drainage, he is not aware of any wetlands on the site. Even if the site is wet, it is not necessarily a wetland as a wetland must meet three separate tests. The applicants must meet City code requirements for storm drainage. The City considers parking areas as pollution generating surfaces so the applicant will need to employ best management practices to ensure water quality and quantity controls. An engineer needs to prepare the storm drainage design. The City has not approved anything as yet. Concerning the car event over the weekend, he was not aware of any event. Parking vehicles on the road is not allowed from an engineering standpoint. The road does not prohibit truck traffic and has accommodated moving vans in the past. Sufficient room exists for vehicles to pass. He is not aware of any large vehicles proposed. The delivery of tables and other items to the site can be accommodated by the road. He sees no significant adverse impact and no impediments or safety issues. One item not clearly met is safety and the comfort and convenience of people on the road. He can't say there will not be any impact, but can say that there will not be a significant, detrimental impact. The mass exit of cars will not lend itself to high speed traffic, but could cause inconvenience for residents. He does not recommend signage or any other mitigation for the road.

MS. THOMPSON reappeared and testified that the City could identify no probable significant impacts.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 4:32 p.m.

NOTE: A complete record of this hearing is available in the office of the City of Buckley Planning Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. The City provided proper notice of the application in accordance with requirements of the Buckley Municipal Code (BMC) as set forth in the Staff Report.
3. The applicant, Brookstom, LLC, submitted a completed application for a conditional use permit to the City of Buckley on December 11, 2014, proposing to establish a Commercial Recreation use on a parcel located at 834 Sheets Road within the City. The parcel, owned by Angela Toman and Robert Brooks, contains approximately 11 acres, abuts Sheets Road for 686 linear feet, and measures approximately 698 feet in depth. Improvements on the parcel include a single-family residential home, detached garage, swimming pool, and accessory structures, all located in the northeast portion of the site. A driveway extending east into the site from Sheets Road near the north property line provides access to the improvements. Spiketon Ditch flows from east to west across the northern portion of the site, south of the home and driveway.
4. Vegetation on the parcel consists primarily of grass, but trees grow along the south property line and along Spiketon Ditch. Abutting uses are limited to single-family residential homes on equivalent sized parcels and vacant parcels to the east and south. No homes are located south of the parcel on the east side of Sheets Road and one home is to the south on the west side thereof. The parcel's south property line marks the Buckley City limits, and unincorporated Pierce County is to the south.
5. The applicant submitted an application for a conditional use permit on December 11, 2014, to allow establishment of a Commercial Recreation use on the west central portion of the site adjacent to Sheets Road. The applicant did not submit an application for a home occupation as the proposed business could not meet the requirements therefor. Thus, the applicant proposes the "Commercial Recreation" use as a second, principal use on the site along with the single-family residential home. While the applicant submitted its original application on October 30, 2014, the City considered the application incomplete on November 26, 2014. Following a determination by the City that the application was complete on December 11, 2014,

the applicant revised the application three times in January, March, and April 2015.

6. Pursuant to the State Environmental Policy Act (SEPA), the City responsible official reviewed the original application and all revisions thereto. The responsible official then issued a threshold Mitigated Determination of Nonsignificance (MDNS) on April 1, 2015, and received numerous comments from nearby neighbors. In response thereto the responsible official issued a revised environmental checklist and MDNS on April 29, 2015, and appellant, Buckley Citizens for Responsible Decisions, timely filed an appeal on May 13, 2015.
7. On the date of submittal of a completed application for the conditional use permit, the BMC provided that the City's Board of Adjustment hears and decides whether or not to grant such permits. The BMC also provided that the Buckley City Council hears and decides SEPA appeals. Furthermore, BMC 20.01.050(2) and Section 197-11-680(3)(a)(v) of the Washington Administrative Code (WAC) requires consolidation of hearings to consider a conditional use permit and a SEPA appeal into one hearing before the City Council. However, the City Council approved Ordinance 12-15 on June 2, 2015, that became effective "immediately". Section 2 of the Ordinance referred hearings on both matters to the City hearing examiner as follows:

The intent of these amendments is to ensure that SEPA appeals consolidated with conditional use permit hearings shall be heard by the hearing examiner for a final decision, appealable to superior court. Any code provisions to the contrary shall be considered superseded.

Pursuant to Ordinance No. 12-15, the Examiner convened a public hearing on Monday, July 6, 2015, to hear both the conditional use permit application and SEPA appeal. Due to significant information submitted at the hearing on the conditional use itself and because of additional arguments made by both the City and appellant concerning the environmental appeal, the Examiner reconvened the hearing on Monday, August 3, 2015, for the following purposes: (1) to hear a response by the appellant to the City's response to its appeal; (2) to consider the hours of operation; (3) to consider the days of operation; and (4) to consider traffic and road conditions. Because one of the appellant's members was in eastern Washington fighting the Walla Walla wildfire and another was taking care of a home, appellant requested a continuance for 1-2 weeks. The Examiner was unavailable on the requested dates of August 10 and August 17, 2015, but agreed to leave the record open until 5:00 p.m. Wednesday, August 12, 2015, for parties of record unable to attend the hearing to provide written comment. However, all appellant members attended the August 3, 2015, hearing.

Conditional Use Permit

8. The applicant requests a conditional use permit to allow construction of the Brookstom Event Center that would create a Commercial Recreation use in a park-like setting for family reunions, birthday parties, meetings, retreats, and small weddings. Improvements would include an attractive, white tent less than 14 feet in height and located approximately 380 feet east of Sheets Road near the center of the parcel. A new, improved driveway extending east from Sheets Road near the center of the parcel would provide access to the tent at a hammerhead turnaround. A total of 70 parking stalls (35 on each side of the driveway) would accommodate the vehicles of persons attending functions. All vehicles would park facing south so that headlights would not shine onto occupied parcels to the north. The tent would measure 40 by 60 (2,400 square feet) and would be erected no sooner than May 1 of each year and removed before October 31 of each year. The tent would not accommodate cooking facilities, and ADA port-a-potties would serve attendees. Leland cypress trees planted along Sheets Road and in front of the tent would screen event activities. The surface of the driveway and parking spaces would consist of consolidated gravel, and the driveway would have a crown in the center that would distribute stormwater runoff to the north and south. All improvements are shown a substantial distance from Spiketon Creek and from a ditch that extends along the east side of Sheets Road across the parcel frontage. A farm access already exists at the location of the proposed drive that would serve the business.
9. Apparent miscommunications between staff and the applicant resulted in confusion regarding the times and dates of facility operation. Subsequent to the first hearing it became apparent that the applicant interpreted “weekend” as including Friday evening and all day Saturday and Sunday. The applicant also interpreted “holiday” as the holiday itself and not the evening before. The applicant requested that events extend to no later than 9:00 p.m. as opposed to “dusk” or “sunset”, as closure times would vary between May and October. The applicant also requested an additional hour for cleanup at the end of a function. The number of attendees would be limited by the number of parking spaces, and only one celebration would occur per day, regardless of time. More than one celebration per day would require a traffic study and possible road improvements. Staff suggested a time limit of eight hours per event including cleanup. The applicant also agreed to a condition of approval that would prohibit transfer of the conditional use permit to a new owner should the property owners elect to sell their property. Thus, should a new property owner desire to continue the business, it would need to acquire all necessary permits. The property owners expressed their intent to remain on the parcel during the events and to post a list of events near Sheets Road to advise neighbors of times and dates thereof. Conditions of approval hereinafter implement the property owners’ and the applicant’s commitments.
10. Access to the site is provided via Ryan Road and Sheets Road. Sheets Road extends south from Ryan Road at a “T” intersection. Sheets Road has a pavement

width of 17-18 feet, no fog line or centerline striping, and narrow shoulders. Ditches extend along both sides of the road for its entire length. All event attendees will utilize Sheets Road to access the site. Beyond the applicants' parcel Sheets Road extends south into unincorporated Pierce County and splits at a "Y" intersection into 318th Avenue East that extends to the southeast and 120th Street East that extends to the southwest. Both roads eventually dead end. The entrance to the site is approximately one-half mile south of Ryan Road.

11. Because events will occur on Saturdays, Sundays, and holidays the business will generate no vehicular trip during the weekday a.m. and p.m. peak periods. Furthermore, limitation of the number of events to one per day ensures that the average daily trips remain below 250 (including vehicles used for setup, take down, and deliveries). Thus, the City engineer did not require preparation of a Traffic Impact Analysis (TIA) and testified that Sheets Road can safely accommodate event traffic. Adequate entering and stopping sight distance is available at the intersection of the business access and Sheets Road, and also at the intersection of Sheets Road and Ryan Road. The City does not allow parking on Sheets Road and it is obvious from the photographs in Exhibit 34 that vehicles can neither park nor stop to make deliveries on Sheets Road. All parking and deliveries must occur onsite.
12. The aerial photographs and testimony show that parcels abutting Sheets Road are equivalent in size and dimensions to the applicants' parcel, and that most homes are located a substantial distance from Sheets Road. According to the Environmental Noise Study (Exhibit 2):

Our evaluation estimated the location of the event tent to be 330-feet east of Sheets Road, 360-feet from the nearest receiving property line to the west, 200-feet from the south Pierce County zoned shared property line, and 300-feet from the north property line. The nearest residence building is 505-feet southwest of the proposed tent location, and the other residence buildings are over 800-feet from the proposed tent location. (page 8)

While the project site is within the City limits, the site itself and the area along Sheets Road remains rural and generates little traffic.

13. Despite its existing, rural character, the City has placed the areas along Sheets Road within the R-8,000 zone classification. Section 19.20.030(1) BMC defines the R-8,000 zone as follows:

Intent and Purpose. The R-8,000 zone is intended to provide for development at urban residential densities while providing a transitional area between zones of higher urban residential densities and areas of lower densities, environmentally sensitive and public areas.

The R-8,000 zone provides for single-family homes on minimum, 8,000 square foot lot sizes, duplex dwellings on minimum 12,000 square foot lot sizes, townhomes, and cottage housing. Lot dimensions include a minimum width of 70 feet and minimum depth of 30 feet. Structural setback requirements include 20 feet from the front yard, a total of 20 feet of setback from side property lines with a minimum of eight feet, and 25 feet from the rear yard. Thus, the R-8,000 zone classification contemplates and allows urban density residential development along both sides of Sheets Road. The R-8,000 zone allows development of the applicants' parcel with a 60 lot, single-family residential subdivision or 80, duplex residential dwellings. According to staff, the City zoned the area R-8,000 in 2005 or 2006. Prior to that time the area was located within the Residential-Agricultural (RA) zone classification that authorized single-family residential dwellings on 9,600 square foot lots and duplexes on 12,000 square foot lots. Staff testified that the RA zone applied to this area from the date of the City's incorporation in 1889 to 2005/2006. Thus, when surrounding property owners acquired their parcels, they were located within the City limits and within a zone classification that allowed urban density development. The fact that other property owners along Sheets Road have elected not to improve their parcels with uses other than a single-family home does not prevent the applicant from submitting an application for a use conditionally allowed in the R-8,000 classification.

14. Section 19.12.145 BMC defines "Conditional use" as follows:

"Conditional use" means a use listed among those classified in any given zone but permitted to locate in that zone only after a review by the Board of adjustment or appropriate city-designated official [now Hearing Examiner] and the granting of a conditional use permit imposing such design and performance standards as will make the use compatible with other permitted [as opposed to "existing"] uses in the same vicinity and assure against imposing excessive demands upon public utilities.

The definition requires an evaluation of the compatibility of the proposed use with uses permitted by the R-8,000 zone, not with the existing area. A conditional use permit is distinguishable from a use variance. A use variance authorizes a land owner to establish or maintain a use that is prohibited by the zoning regulations. A conditional use on the other hand does not involve a use of property forbidden by the zoning code. Rather, a conditional use permit constitutes recognition of a use that the code permits under stated conditions. Specifically, a conditional use is a use in compliance with rather than in variance of the code. A conditional use also differs from a rezone. A rezone contemplates the amendment of an existing zoning ordinance that changes the zone classification of a particular area. Conversely, a conditional use permit contemplates a use authorized pursuant to the existing zoning ordinance subject to the standards required by said ordinance. A conditional use permit is a mechanism allowing property owners to use their property in a manner expressly permitted by the zone classification. However, the authority to

use said property is subject to certain conditions necessary to protect the public health, safety, and welfare. See Anderson's American Law of Zoning, 4th Edition, Sections 21.02 and 21.11.

15. The listing of allowed conditional uses is a determination by the legislative body (in this case the Buckley City Council) that such uses are consistent with a particular zone. In Anderson, supra, Section 21.17, the author cites Twin County Recycling Corporation v. Yevoli, 90 New York 2nd 1,000 (1997), wherein the court overturned a town's denial of a special use permit for an asphalt recycling plant, holding:

The classification of a particular use as permitted in a zoning district is "tantamount" to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood...as opposed to a variance which would allow an otherwise prohibited use....

As further stated in Anderson, Section 21.13:

The courts rarely disapprove the granting of a special permit solely on the ground that the use is not in harmony with the neighborhood or with the intent and purpose of the zoning ordinance. Legislative authorization of the special permit supports a presumption that the use is generally in harmony with the neighborhood, and that it will promote the general welfare. The burden of proof will rest with the municipality or the persons protesting the granting of the permit....

While the foregoing cases indicate that the courts have some concern that special permits not be granted in violation of a standard requiring harmony with the neighborhood or the community plan, a larger group of decisions suggest that where an applicant seeks a permit or a use which is not grossly inconsistent with the area in which he desires to locate, a denial is likely to be reversed, and issuance probably will be sustained.

Our Washington courts agree with the "larger group of decisions" referred to by Anderson, supra.

16. One issue in the present case is whether public perception of the impacts associated with a private event center provides a legitimate basis for denying the conditional use permit. In addressing a public perception issue our Washington Court of Appeals in Department of Corrections v. City of Kennewick et. al., 86 Wn. App. 521 (1997) held:

The few Washington cases that have considered the relevance of community fears to zoning decisions have required that the fears be substantiated before the zoning authority may use them as a basis for its decision...The Court distinguished between "well-founded fears and those based on

inaccurate stereotypes and popular prejudices”. The later category does not justify zoning restrictions...

We hold that there is a distinction between nuisance cases and zoning cases that prevents the decision maker from considering neighbors’ general fears in deciding whether to grant an owner’s application for a conditional use permit. 86 Wn. App. 521 @ 532, 533

In Sunderland Family Treatment Services v City of Pasco, 127 Wn. 2d 782 (1995), our Washington Supreme Court evaluated the denial of a special use permit for a group home crisis residential center for abused and neglected teenagers in a single-family residential zoning district. The Court held that the City’s finding that the housing of high risk juveniles will create more objectionable noise, concerns for security, and other nuisance activity to the neighborhood was based on unsubstantiated fears rather than substantial evidence:

The proposed use involved teenagers living away from their families while the existing use involved elderly people and young families...The children were “troubled”. While this word may suggest a public safety factor, it falls far short of constituting an actual threat on which a decision might be validly based.

In fact, the City’s denial appears to rest on neighborhood opposition...While the opposition of the community may be given substantial weight, it cannot alone justify a local land use decision...Therefore, we hold the City’s action in denying the permit was not based on competent and substantial evidence...127 Wn. 2d 782 @ 797

In the present case opposing residents have asserted public health, safety, and welfare reasons for denial to include noise of persons attending the event, noise of music, installation of a non-residential building (tent) that can be seen from the road and abutting parcels, generation of significant traffic, and inadequate roads. None of the allegations are based on “competent and substantial evidence”. Furthermore, allegations that the event center and its tent will somehow change the character of the area does not amount to “well founded fears” that can justify denial of the conditional use permit.

17. Section 19.20.130 BMC sets forth a matrix that identifies “permitted uses for all zones”. For the R-8,000 classification said Table authorizes the following uses as permitted outright:

“Parks and recreation, public”; “duplexes”; “group homes”; “intensive agriculture production”; and “places of worship”.

Thus, the City could improve the 11 acre parcel with a public park. The definition of “Place of worship” set forth in BMC 19.12.426 includes related activities such as educational, charitable, and social activities. A church with its accessory uses could locate on the premises without the necessity of obtaining a conditional use permit. In Hansen v. Chelan County, 81 Wn. App. 133 (1996), our Washington Court of Appeals in evaluating a conditional use permit compared the impacts of the proposed conditional use with a use allowed outright in the zone. In Hansen a property owner proposed to convert an orchard into a golf course and abutting property owners objected. The Court held as follows:

The effect of a proposed use on its neighbors will not support a denial of a special [conditional use] permit unless the effect is greater than that of uses permitted in the district without special permit...Here, there was, however, no finding, or any evidence, that the effects of the proposed golf course were any greater than would occur if the Hansen’s used the property for uses permitted outright. Because the property is zoned as general use property under the CCZC, the Hansen’s could, without a CUP, remove the existing orchard, subdivide the property, and build single-family or duplex dwellings....

...While there is substantial evidence to support some of the Board’s findings, the problem is that none of the findings indicate any inconsistency with the comprehensive plan which would not occur if the Hansens used the property in a manner permitted outright. Nor do they address how the use of the property as a golf course damages or injures their neighbors in a way permitted uses would not. Thus, the Board’s reasons for denying the CUP are inadequate as a matter of law....81 Wn. App. 133 @ 139, 140

In the present case improvement of the site with a public park; large church with associated parking and church activities to include weddings and receptions; a 60 lot single-family subdivision; or 80 unit duplex development would create substantially greater impacts to residents along Sheets Road. None of said uses would be subjected to conditions of approval hours of operation, traffic monitoring, or weekend use for six months of the year. A public park with baseball/soccer/softball fields would create substantially more noise than the applicant’s proposal. Thus, when the compatibility of the proposed use is compared with “other permitted uses” in the R-8,000 zone pursuant to BMC 19.12.145, the applicant’s use is less intense and less invasive.

18. Residents assert that the applicant’s parcel is wet and even now after a dry and hot summer, cars get stuck on the site. Residents also note that the National Wetland Inventory and Pierce County Buildable Lands Inventory lists the applicant’s parcel as having significant wetlands. However, the applicant engaged H&S Consulting to perform a wetland delineation on the site, and its expert found that none of the wet areas meet the criteria for a wetland and that no wetlands exist on the site (Exhibit

- 19). The City accepted the H&S Report. The National Wetland Inventory and Pierce County Inventory are generalized studies, and specific studies are needed to confirm the existence of wetlands and their specific types. Specific studies of parcels may show as in this case that even though sites are wet they do not meet the definition of wetland. Residents presented no expert evidence to contradict the report of H&S Consulting. Therefore, the applicant has shown that the site contains no wetlands.
19. Residents raised concerns regarding parking and the adequacy of access to serve the business. The applicant proposes 70, ADA accessible, landscaped, marked, parking stalls such that 35 vehicles can park on each side of the access drive. Significant buffers are provided from the parking areas to Spiketon Ditch as shown on Exhibit 33. Furthermore, the applicant will need to provide an engineered storm drainage plan for the impervious access drive, parking area, and concrete pad/tent that will meet adopted City standards. The City engineer has determined that Sheets Road will provide adequate access to the site so long as no vehicle trips occur during the a.m. and p.m. peak periods. Neither the Buckley Fire Department nor Police Department expressed concerns regarding interference with emergency vehicle access. Therefore, the parking and access are adequate to serve the site subject to compliance with conditions prohibiting parking of vehicles on Sheets Road, stopping of delivery trucks on Sheets Road, and the provision of monitors for large events.
20. Residents raise significant concerns regarding noise generated by events at the site. In response thereto the applicant engaged SSA Acoustics to perform an “Environmental Noise Study” for the event venue. Erik Miller-Klein, professional engineer, prepared the noise study and testified at the hearing. Noise meters were installed on the west, north, and south property lines of the parcel to measure ambient sounds present in the area and to determine the maximum level for event music and activities. Section 8.76.060 BMC limits noise levels at property lines to 55 dB(A) during daytime hours and 45 dB(A) during evening hours, which the ordinance defines as between 10 p.m. and 7 a.m. Said section also allows a use to exceed said limits for various time periods and levels during one hour periods. The SSA study found that ambient sound levels in the area vary between 35 and 37 dB(A) during the daylight hours or approximately 20 dB(A) less than the maximum authorized by the BMC. The area is very quiet and sounds will carry from the events. The applicant proposes to restrict speakers to a preset volume that will not allow sounds to be heard at the property lines. The applicant also indicated that on occasion unamplified music such as a guitar or string quartet could perform in the tent.
21. Residents also express concerns regarding noise from event attendees circulating around the site outside of the tent. Chapter 8.30 BMC entitled “Noise Control” sets forth the “purpose” of the ordinance in Section 8.30.010 in part as follows:

...The intent of the city council is to control the level of noise pollution in a manner which promotes commerce, the use, value and enjoyment of property, sleep and repose and the quality of the environment....

Section 8.30.020 BMC provides that the following sources of sound are considered public disturbance noises:

- (c) Yelling or shouting which is audible on the public streets or public grounds...at any time and place so as to unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property. (emphasis added)
- (d) The creation of frequent, repetitive or continuous sounds which emanate from any building, structure...and which unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property, such as sounds from band sessions or social gatherings. (emphasis added)
- (f) The creation of sound from any audio equipment, such as a tape player, radio or compact disc player, television, musical instrument, or similar device...operated at a volume as to be audible at least 50 feet from the source....

The applicant must comply with the criteria set forth in BMC 8.30.020 and therefore must control event attendees from “yelling or shouting” in a manner that would “unreasonably disturb” abutting and nearby neighbors. The applicant proposes to do so by restricting attendees to areas in close proximity of the tent except when arriving and departing. Furthermore, the applicant will orient the tent and preset the speaker system such that sounds generated by a DJ or musicians do not reach the property line and therefore will not “unreasonably disturb” or interfere with abutting and nearby property owners. While subsection (f) prohibits audio equipment sound from extending more than 50 feet from the source, such criteria does not apply to the applicant’s business, which is covered by subsection (d) that refers to “band sessions or social gatherings”. Based upon the noise study and mitigation proposed, the business can comply with Chapter 8.30 BMC. Again, residents presented no expert testimony to challenge the SSA Acoustic study.

- 22. Residents raised concerns regarding impacts on the North Rainer Elk Herd that they have observed in the area and on the site. Residents also raised concerns regarding use of the site, specifically the Spiketon Ditch, by Great Blue Herons and Bald Eagles. However, the Washington State Elk Herd Plan developed by the Washington Department of Fish and Wildlife (DFW) does not include parcels within the City of Buckley and recognizes that certain losses will occur within the City (Exhibits 32, 32A, 32B). Furthermore, the occasional use of a site by an eagle or heron does not provide evidence of use of the site for either a perch tree or nest. Staff provided a copy of the environmental checklist to DFW, which made the

agency aware of the project and its location. DFW did not comment, and according to SEPA, such means that the agency has no concerns with the project. Section 12.13.010 BMC provides that priority habitats and species are identified by DFW. The City identifies habitats and species of local importance and provides mapping of habitat and conservation areas. No such areas exist on the applicants' parcel.

23. Prior to obtaining a conditional use permit the applicant must show that the request satisfies the criteria set forth in BMC 19.40.130. Findings on each criteria are hereby made as follows:

A. The applicant's proposed use of the site is authorized by Section 19.20.130 BMC as permitted in the R-8,000 zone classification subject to a conditional use permit. The proposed use is likewise consistent with the "Intent and Purpose" of the R-8,000 classification as set forth in BMC 19.20.030(1). Said section contemplates development of housing at urban residential densities and provision of a transitional area. Furthermore, BMC 19.20.130 authorizes a number of nonresidential uses in the R-8,000 zone either outright or by conditional use permit.

B. Granting the conditional use permit will not detrimentally impact the public health, safety, comfort, convenience, and general welfare, nor will it adversely affect the established character of the surrounding neighborhood. The use will likewise not injure property or improvements in the vicinity and zone for the reasons set forth above. Testimony at the hearing established that nearby residents do not want to see the tent, do not want to hear any voices from people attending a function, and do not want to see or hear additional traffic on Sheets Road. The noise regulations of the BMC prohibit noises that "unreasonably" disturb the peace and tranquility of abutting and nearby parcels. The fact that a property owner can hear people on adjoining parcels (one property owner noted they could hear children playing in a swimming pool) does not "unreasonably" interfere with peace and tranquility, nor does it "unreasonably" affect the comfort, convenience, and established character of a surrounding neighborhood. Such is especially true for neighborhoods located within an urban growth area and zoned for high density residential uses. Furthermore, according to the City engineer, Sheets Road, a public, City street, can accommodate event traffic that will occur in non-rush hour periods. As set forth by our Washington Court of Appeals in Maranatha Mining, Inc., v Pierce County, 59 Wn. App. 795 (1990):

The law does not require that all adverse impacts be eliminated; if it did, no change in land use would ever be possible. 59 Wn. App. 795 @ 804

The applicant's business will create impacts in the area, but the impacts will not be unreasonable assuming compliance with conditions of approval and with BMC standards. Finally, the "surrounding neighborhood" presently supports a taxidermy business, church, nursery, metal fabrication shop, and agricultural produce sales (Exhibit 13). The proposed, very part-time business will occur on Saturdays, Sundays, and three holidays during six months of the year and will not adversely affect the "character of the surrounding neighborhood".

- C. The proposed use is properly located in relation to other land uses in the area and to transportation and service facilities in the vicinity. Public facilities and street capacities are capable of serving event traffic without placing an undue burden on such facilities and services. The City engineer has determined that Sheets Road is capable of supporting event traffic that will occur on Saturdays, Sundays, and holidays. The traffic volume does not require preparation of a TIA. No evidence shows that the use will create an adverse impact on public facilities and services. The applicant proposes to utilize ADA accessible port-a-potties that will not impact the existing, onsite septic disposal system.
- D. The 11 acre parcel is of sufficient size to accommodate the proposed use. The site plan shows significant setbacks from exterior property lines, significant open spaces, adequate parking areas, and loading and unloading areas near the tent. Conditions of approval require landscape screening, and the utilization of preset speakers will ensure no detrimental noise impacts to abutting and nearby properties.
- E. Granting the conditional use permit is not inconsistent with the City of Buckley Comprehensive Plan or with any BMC code sections, ordinances, regulations, specifications, or plans in effect to implement the comprehensive plan. Staff has analyzed applicable comprehensive plan policies in the Staff Report and the Examiner incorporates said discussion and analysis as if set forth in full herein.

SEPA Appeal

- 24. Robert and Janice Pacific and Connie Bender on behalf of appellant timely filed an appeal of the MDNS issued by the City responsible official. Appellant alleges that the City utilized an out of date environmental checklist, either accepted or provided inaccurate and incomplete answers to checklist questions, and that the MDNS failed to mitigate adverse impacts of the project. MDNS mitigating measures are included as conditions of approval at the end of the Staff Report.
- 25. Appellant's appeal focuses primarily on the inadequacy of the environmental checklist. Our courts have had only a few occasions to review the adequacy of

environmental checklists as part of the threshold determination process. In those cases our courts have not been inclined to strictly scrutinize checklist responses:

If the overall process is credible, specific statutory and administrative requirements are plausibly satisfied, and the determination itself seems intuitively correct, judicial interference is unlikely. Settle, the Washington State Environmental Policy Act, Section 13.01(4)(C).

SEPA requires a responsible official to review a completed checklist and supporting documents and then determine whether the checklist provides “reasonably sufficient” information to evaluate the proposal’s environmental significance (WAC 197-11-330, 335). In the present case the responsible official was not satisfied with the applicant’s checklist and elected to prepare her own checklist on which she based her issuance of the threshold MDNS. The responsible official felt she had sufficient knowledge of the environmental impacts of the project to issue the MDNS, especially considering the impacts of the project. The decision to issue a MDNS must be based on information reasonably sufficient to evaluate the proposal’s environmental impacts (WAC 197-11-335). The City’s decision is accorded substantial weight.

26. Section 197-11-800(1)(c) WAC authorizes cities and counties to expand exemptions for SEPA review. Section 12.04.050 BMC sets forth categorical exemptions from SEPA review and includes the following in subsection (3), entitled “Minor New Construction-Flexible Thresholds”:

The construction of an...recreational...building with up to 8,000 square feet of gross floor area and with associated parking facilities designed for that number of off-street parking spaces required by the zoning ordinance, not to exceed 40 parking spaces.

By comparison the applicant proposes a 2,400 square foot tent and 70 parking spaces. Thus, the applicant’s project is close to a categorical exemption from SEPA review (by an excess of 30 parking spaces).

27. SEPA requires identification of the probable, significant, adverse, environmental impacts of an action. Once identified, mitigating measures are imposed that reduce the impact to less than significant, but need not eliminate the impact. In accordance with WAC 197-11-660, a responsible official, prior to issuing a threshold determination, must first consider whether city, state, or federal requirements and enforcement thereof would mitigate any identified, significant, adverse impact. Therefore, the responsible official must initially consider mitigation provided by the City’s noise regulations, the bulk regulations of the R-8,000 zone classification, open space requirements, off-street parking and loading requirements, landscaping requirements, critical areas ordinance, Fish and Wildlife Habitat Conservation Areas, and level of service standards for public facilities. If, and only if, the

responsible official identifies a significant adverse impact not mitigated by said regulations may it impose mitigating measures pursuant to SEPA authority. Even then, said mitigating measures must be based upon an identified, adopted, SEPA policy. In the present case the environmental appellants do not identify any probable, significant, adverse environmental impacts that the project would cause that are not mitigated to less than significant by city, state, or federal laws, or mitigating measures imposed by the responsible official. Furthermore, appellants do not identify any City SEPA policies on which to base any proposed environmental mitigating measures. Mitigating measures must be related to a specific adverse impact clearly identified in an environmental document (WAC 197-11-744).

28. In Levine v Jefferson County, 116 Wn. 2d 575 (1991), our Washington Supreme Court invalidated mitigating measures imposed by a responsible official on a building permit for a small lumber mill. The Court held:

...The record here states that 15 letters were received in opposition to the project expressing concern over noise impacts, erosion of real estate values, additional truck traffic, road deterioration, pollution of nearby Eagle Creek, impact to the community water supply, hours of operation, buffers around the site, purchase of additional property by the Levines, and flooding and runoff from Eagle Creek....

Based on these comments, the County conditioned the permit with nine mitigative restrictions. As in Nagatani, there is no evidence that the perceived ill effects that concern the neighbors would actually materialize. There are no agency findings of fact indicating that the restrictions reflect actual adverse impacts.

We uphold the Court of Appeals decision ordering the building permit to be issued without mitigative restrictions...The record fails to address specific, proven environmental impacts. There is no citation in the record to any identifiable agency policy upon which the restrictions were based.... 116 Wn. 2d 575 @ 581, 582

In the present case residents have asserted similar concerns as in Levine but have provided no evidence to show the materialization of such impacts, especially considering BMC requirements and mitigating measures. Assertions of environmental impacts without corroborating evidence will not support an exercise of substantive SEPA authority. The appellant has simply not shown (or alleged) any probable, significant, adverse, environmental impacts associated with this project that have not been mitigated to less than significant.

29. The City has not provided any SEPA categorical exemptions for development in critical areas. However, according to WAC 197-11-908, SEPA environmental

review in critical areas is limited to:

- A. Documenting whether the proposal is consistent with the requirements of the critical areas ordinance.
- B. Evaluating any significant adverse environmental impacts not adequately addressed by GMA planning documents and development regulations.

Again, the appellant has not documented any portions of the proposal that do not meet the requirements of the City's critical areas ordinance, nor has it provided evidence of significant adverse environmental impacts not addressed by GMA planning documents and development regulations. In their submittals, residents note that BMC 12.13.040, a portion of the critical areas ordinance, prohibits development within a habitat conservation area or buffer "with which state or federal endangered, threatened, or sensitive species have a primary association". Said section also requires that alterations of land adjacent to a habitat conservation area or buffer not occur prior to consultation with DFW. The applicant must comply with all sections of the BMC, to include 12.13.040 and SEPA need not address these issues. Furthermore, BMC 12.13.010 provides that DFW identifies priority habitats and species and that the City identifies habitats species of local importance. Once again, the applicant must comply with the requirements of said section, and SEPA mitigation is not necessary.

CONCLUSIONS:

- 1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
- 2. The applicant has shown that the request for a conditional use permit satisfies all criteria set forth in BMC 19.40.130 and therefore should be approved subject to the conditions set forth hereinafter.
- 3. Section 12.04.340 BMC authorizes appeals of actions "conditioned or denied on the basis of SEPA by a non elected official". Assuming the present appeal falls under said section, WAC 197-11-680(3)(viii) provides:

Agencies shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

Our courts have routinely interpreted said section as requiring a finding of "clearly erroneous" to overturn a responsible official's determination. Our Washington Supreme Court in Polygon Corporation v Seattle, 90 Wn. 2d 59 (1978), held:

In applying the clearly erroneous test to an administrative decision, we examine the entire record and the evidence in light of the public policy contained in the legislation authorizing the decision...The court does not substitute its judgment for that of the administrative body and may find the decision “clearly erroneous” only when it is “left with the definite and firm conviction that a mistake has been committed”. 90 Wn. 2d 59 @ 69

In the present case, while the Examiner would have required more complete information regarding operation of the business, the manner in which the responsible official conducted SEPA review of the project is not clearly erroneous, especially when considering mitigation provided by existing codes. Therefore, the appellant has not established that the responsible official’s actions in this matter were clearly erroneous.

4. The SEPA appeal should be denied and the request for conditional use permit approved subject to the following conditions:
 1. Spiketon Ditch:
 - a. Setbacks to Spiketon Ditch for all activities will be no less than 25 feet.
 - b. The ditch shall not be used for dumping or waste disposal.
 - c. All activities shall be limited to the south side of Spiketon Ditch.
 - d. The applicant shall not use herbicides, pesticides, or fertilizer in or near Spiketon Ditch to increase the “park-like atmosphere” for this use.
 - e. The applicant shall provide utilities to the project from Sheets Road and shall not extend utilities through the Spiketon Ditch easement.
 2. Noise:

The applicant shall comply with BMC noise requirements and also implement mitigation measures set forth in the SSA Acoustics Noise Study. Music shall occur only through a disc jockey (DJ) using the applicant’s preset speakers within the tent, or by unamplified music from stringed instruments or softly played brass instruments.
 3. Hours and Days of operation:
 - a. Hours of operation shall commence no earlier than noon and terminate no later than 9:00 p.m. Provided, that setup-take down may extend to one hour before and after events.
 - b. The applicant shall conduct business on Saturdays, Sundays, and holidays.
 - c. The applicant shall limit use to one celebration each business day.
 - d. The applicant may use Friday evenings between 6:30 p.m.-8:30 p.m. for setup for weekend events. The applicant may also use the same time period the evening before a holiday event for setup.

4. Landscape:
 - a. Prior to construction of the parking facility, the applicant shall submit a planting plan meeting the requirements of BMC 19.29 both for the barrier buffers and for landscape parking (BMC 19.29.050, 060(2 & 4), and 070). At installation, trees shall be 6 feet tall and provide a screen within two years.
 - b. To satisfy the comprehensive plan goals and policies for neighborhood compatibility, the applicant shall plant sight-obscuring trees next to Sheets Road in accordance with BMC 19.29.060 (2), barrier buffers. This will require a 20-foot wide strip next to the Sheets Road property line in the area between Spiketon Ditch and south of the vegetated dispersion flowpath, as shown on the March 12, 2015 drawing.
 - i. The buffer will contain a mixture of tree species and native shrubs (such as rhododendrons).
 - ii. A fence on the project-side of the landscape may be used in addition to the 20 feet of landscaping, but not to narrow the landscape width to 10 feet, as is normal for this type of buffer.
 - iii. The landscaping is required as showed on the April 13, 2015, plan, rather than along side and interior lot lines, as is normal for this type of buffer.
5. Approval of Construction Plans must be obtained from the City Engineer for Clearing, Grading, Erosion Control, and Utilities.
6. Approved sedimentation and erosion control measures shall be installed prior to any land-disturbing activity and shall remain in place until the City Engineer approves removal.
7. The applicant shall comply with applicable stormwater management regulations pursuant to BMC 14.30. The applicant shall submit documents for review and approval by the city to demonstrate compliance with the minimum requirements of BMC 14.30.051, which include a stormwater site plan prepared in accordance with BMC 14.30.052 and the 2005 Department of Ecology Stormwater Management Manual for Western Washington.
8. The applicant shall comply with the requirements of the Washington State Department of Ecology National Pollution Discharge Elimination System (NPDES) general permit for stormwater discharges associated with construction activity.

9. The applicant shall comply with all other State and/or Federal regulations and obtain relevant permits.
10. All land-disturbing activity permit shall be submitted and construction shall not begin until the LDA permit is approved (also see Condition B.1).
11. The applicant shall wet the gravel before and during events to control dust production.
12. The applicant shall submit utility plans prior to installation or use.
13. City permits shall be obtained for the following:
 - A. A City right-of-way permit, including applicable bonding requirements, will be required for any proposed construction within the existing Sheets Road right-of-way. This requirement should be included as a condition of approval for the Project.
 - B. A land disturbing activities (LDA) permit will be required for grading and filling on the parcel. The landscaping plan required in Condition of Approval 1.A.4 shall be submitted with this permit application.
14. Landscape areas will be protected from gravel and wheel infiltration by masonry, cement, berms, or other device to achieve this requirement. This method shall be placed on the landscape plan as a detail.
15. A place for garbage pick-up next to the street shall be indicated on the LDA plans.
16. A Temporary Erosion and Sediment Control (TESC) Plan shall be prepared for the project and installed after approval by the city engineer.
 - A. Mud, dust, and loose material shall not transfer to the street or be swept into the drainage ditch. Immediately after each event any mud or dust from the site shall be swept back into the parking stalls or the landscape berm.
17. The applicant shall operate the business only between May 1 and October 31 of each year.
18. No on-street parking or on-street stopping/loading of vehicles shall occur on Sheets Road.
19. The applicant will provide traffic monitors for events that generate more than 30 vehicles. The monitors will stagger the number of cars leaving the premises to ensure no inconvenience to residents and only minor queuing at the Sheets Road/Ryan Road intersection. Monitors will also ensure that guests do not blow horns or cause excessive engine or tire noise.

20. All exterior lighting shall be directional and directed downward and toward the vacant parcel to the south.
21. The business will occur on no more than .68 acres of the site, as shown on the site plan.
22. The applicant will utilize port-a-potties and will not install formal bathroom facilities unless authorized by the Tacoma-Pierce County Health Department.
23. The applicant will not prepare food for event guests nor will it install kitchen facilities.
24. The applicant shall confer with DFW and other agencies with jurisdiction to determine the location of habitat, if any, and mitigating measures therefor, if necessary.
25. This conditional use permit is personal to Brookstom, LLC; Angela Toman; and Robert Brooks. Should the above parties individually or collectively sell the business or the parcel, the permit shall terminate and the new owner must apply for a new permit prior to operating the business.
26. Angela Toman or Robert Brooks or a designated representative not associated with the event shall be onsite during events to monitor compliance with conditions of approval.
27. The applicant shall post or use email or other media to advise neighbors along Sheets Road of the times and expected attendance of events.
28. The applicant shall provide neighbors along Sheets Road with a phone number to notify the applicant of issues with an event. The applicant shall maintain a record of complaints and review it with the City after October 31, 2016 and 2017. The City shall determine whether future recording/reviews are necessary.
29. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
30. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws,

regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for a conditional use permit to allow Brookstom, LLC, to operate a private event venue at 834 Sheets Road, Buckley, is hereby granted subject to the conditions contained in the conclusions above.

The environmental appeal of Buckley Citizens for Responsible Decisions is hereby denied.

ORDERED this 24th day of August, 2015.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 24th day of August, 2015, to the following:

APPLICANT: Angela Toman
834 Sheets Road
Buckley, WA 98321

OTHERS:

Marvin and Sandra Sundstrom
P.O. Box 2080
Buckley, WA 98321

Connie Bender
1915 Ryan Road
Buckley, WA 98321

Bob and Janice Pacific
890 Sheets Road
Buckley, WA 98321

Jim Hall
28910 Himklemau Road
Buckley, WA 98321

Karli Rauch
790 Main Street
Buckley, WA 98321

Travis and Dana Toman
270 Hamilton Court
Buckley, WA 98321

Rayetta Montgomery
23804 S.E. 472nd Street
Enumclaw, WA 98022

Glen and Karen Johnston
622 Sheets Road
Buckley, WA 98321

Lauren Weishaar
1875 Ryan Road
Buckley, WA 98321

Wayne McBroom
1461 Main Street
Buckley, WA 98321

Silvia Testa and Jay Erickson
890 Sheets Road B
Buckley, WA 98321

Scott Clark
4401 South 66th Street
Tacoma, WA 98409

Dominic Miller
2102 Carriage Drive S.W.
Olympia, WA 98502

Christopher and Betty Jo Rankin
Buckley Wine & Spirits
177 South River Avenue
Buckley, WA 98321

Larson and Associates
Attn: Bill Diamond
4401 South 66th Street
Tacoma, WA 98409

CITY OF BUCKLEY

**CASE NO.: Conditional Use Permit CUP# 2014-03
Brookstom LLC**

APPEAL OF EXAMINER'S DECISION:

The final decision by the Examiner may be appealed in accordance with Chapter 20.01.260 of the Buckley Municipal Code.