

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND,
P 18-0377)	DECISION AND
Hintz)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on February 6, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This is an application for a Conditional Use Permit to allow a change of use from single family residence to transient residence related to an existing wedding venue business pursuant to Grant County Code 23.08.220(c).
2. The proponents are Phillip and Shannon Hintz, 9383 Road 11.5 NE, Moses Lake, WA 98837.
3. The project site location is 9383 Road 11.5 NE, Moses Lake, WA 98837. The site is located in the southwest quarter of Section 3, Township 20N, Range 28E, W.M., Grant County, WA. Parcel #19-0226-001.
4. The zoning for the property is Agriculture.
5. The zoning for neighboring parcels is: To the north, Agriculture; to the south, Agriculture; to the east, Agriculture; to the west, Agriculture.
6. The Comprehensive Plan designation for the subject property is Rangeland (AG).
7. The subject parcel was reviewed for Critical Areas and was found to be located within 300 feet of a possible cultural resource area. Staff contacted Dennis Wardlaw with the WA State Department of Archaeology and Historic Preservation concerning the proposal. Due to the developed nature of the site and based on the proposed site plan, DAHP did not require a Cultural Resource Survey. DAHP recommends that inadvertent discovery language to be conditioned on the project. This will be made a condition of approval.
8. The Notice of Application for this project was published in the Columbia Basin Herald on December 19, 2018, additionally, it was mailed to property owners within 300 feet of the subject property. Information on this project was also mailed to applicable agencies of jurisdiction for their review and comment.
9. The following agencies and County departments provided comments:

- 9.1 Grant County Fire Marshal responded on December 20, 2018
- 9.2 Grant County Building Official responded on December 20, 2018
- 9.3 Grant County Public Works Department responded on December 20, 2018
- 9.4 Grant County Assessor's Office responded on December 31, 2018
- 9.5 U.S. Bureau of Reclamation responded on December 31, 2018
- 9.6 WA Department of Archaeology and Historic Preservation responded on December 11, 2018

10. The following agencies were notified but did not respond:

- 10.1 Grant County Treasurer's Office
- 10.2 Grant County Health District
- 10.3 Grant County Auditor's Office
- 10.4 Grant County Emergency Management
- 10.5 Grant County Noxious Weed Control Board
- 10.6 Grant County PUD
- 10.7 WA State Department of Fish and Wildlife
- 10.8 Grant County Fire District #5
- 10.9 East-Columbia Basin Irrigation District

11. **Agency Comments:** The following is a summary of comments received:

11.1 **Grant County Building Official:**

- 11.1.1. Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure or to erect, install, enlarge, alter, repair, remove, convert or replace any gas, mechanical or plumbing system, the installation of which is regulated by International Building Code, International Residential Code, International Mechanical Code, or Uniform Plumbing Code, or to cause any such work to be performed, shall first make application to the Grant County Development Services, Building Division and obtain the required permit.
- 11.1.2. For the change of use from a single family residence to an R-1 Occupancy containing sleeping units where the occupants are primarily transient in nature will require a permit, and shall comply with the International building code as adopted at the time of application. This will include but not be limited to a residential fire suppression system for that structure.

11.2 **Grant County Fire Marshal:**

- 11.2.1. With the purpose for the current residence to be used as a transient residence, a change of use will need to be done and fire sprinklers would need to be installed in the current residence if it was approved to be used as stated in the letter dated November 26, 2018.
- 11.2.2. A residential 13D sprinkler system would be the type that would be used.

11.3 Grant County Public Works:

11.3.1. An approach permit shall be obtained for County road access.

11.4 WA State Dept. of Archaeology & Historic Preservation

11.4.1. I am okay with just including an Inadvertent Discovery Plan for the caretaker residence construction for the proposed location. However if the applicant wants to move the caretaker residence closer to the main residence then I would recommend a survey.

11.5 U.S. Bureau of Reclamation:

11.5.1. Construction storm water or runoff of any type from a construction site should not enter any of Reclamation's facilities at any time and must be contained on site.

11.5.2. Reclamation and the District must review and approve any work that will involve these facilities or the existing rights-of-way prior to commencing such work. Structures are prohibited from encroaching upon existing rights-of-way corridors without Reclamation's and the District's prior approval.

11.5.3. The agricultural water that supports Farm Unit 55 in Block 40 must only be used for agricultural purposes. The proposed project may render the proposed land ineligible for the agricultural water entitlement authorized by the Project. The proponent is advised to initiate discussions regarding the release of the agricultural water entitlement, by contacting the East Columbia Basin Irrigation District headquarters in Othello, Washington.

11.5.4. Please see attachment B for the letter in its entirety.

11.6 Grant County Assessor's Office:

11.6.1. Parcel 19-0226-001 is an 8.81 acre parcel of land with a pavilion, SFR and manufactured home.

11.6.2. Owners are Phillip and Shannon Hintz.

11.6.3. No issues.

12. The application was determined to be Technically Complete on December 11, 2018.
13. This proposal was processed as a Type III Quasi-Judicial Decision, in accordance with Chapter 25.04 "Permit Application and Review Procedures" and Chapter 25.08 "Conditional Uses and Variances" of the Grant County Unified Development Code.
14. This proposal was reviewed for compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of Grant County Unified Development Code. The project will be conditioned with inadvertent discovery language regarding Cultural Resource discoveries.
15. The proposal is not located within an Urban Growth Area of any city.

16. The project site is located in the Agricultural Zoning District.
17. Applicants previously had approved a CUP (Planning File 03-3576) for a water bottling plant and Discretionary Use (Planning File 04-3929) for a caretaker for the bottling plant. Within Conditional Use Permit File 07-4698 (temporary outdoor event site) is a statement from applicants stating the water market has changed and they are no longer going to pursue this venture.
18. A CUP was approved in Planning File #07-4698 to operate a temporary outdoor event site for social events such as weddings.
19. Condition of approval #12 of CUP #07-4698 specifically states that the applicant shall comply with all requirements of the USBR, including but not limited to the following:
 - 19.1. Applicant shall obtain and comply with a Recreation Lease.
 - 19.2. Applicants shall receive a Water Service Contract.
20. A CUP Compliance Review was completed on February 27, 2012 (Planning File 07-4698-01). It was determined that the applicant was compliant with the conditions of approval set forth in CUP 07-4698. The USBR commented "This is in response to your letter dated February 1, 2012, requesting verification of compliance with a lease between the Hintzes and the Bureau of Reclamation, as well as verification of their Water Service Contract. As of the present date [February 23, 2012], the Hintzes have complied with the terms of their lease and have obtained a Water Service Contract for the subject property. We will, however, continue to monitor for compliance with the terms of the lease."
21. No comments were received from the USBR that would prohibit the approval of this proposal.
22. An administrative official interpretation (#06-4606) was issued in 2006 which requires a Conditional Use Permit for transient (short-term) rental residences.
23. The applicant has applied for a caretaker residence (BF 18-0795-labeled as "new residence with deck" on site plan) in order to reside on and maintain the property.
24. A caretaker residence is allowed outright in the Agricultural Zoning district pursuant to GCC 23.04 Table 4.
25. A site visit was conducted on January 7, 2019 by GC Development Services staff.
26. Information about this application was sent to all applicable agencies of jurisdiction for their review and comments. Agency comments and/or requirements specific/applicable to this proposal have been included as Conditions of Approval. All comments received have been included as part of this Staff Report, and will be made available to the applicant. No adverse comments were expressed by any agency that would prohibit development.
27. No public comments were received.

28. As mentioned above, this Conditional Use Permit application is to allow a change of use from single family residence to transient residence related to an existing outdoor wedding venue business.
29. Grant County Development Services Staff reviewed and considered the application materials and the comments received for the proposal. Based on the proposed Conditions of Approval specified below, and the current design of the project, staff recommended approval of subject Conditional Use Permit.
30. The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
 - 30.1 We have complied with the Grant County Code in our current Conditional Use Permit to hold outdoor Weddings and Events. We will continue to comply with the Grant County Code for this new Permit.
 - 30.2 The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan. An administrative official interpretation (#06-4606) was issued in 2006 which requires a Conditional Use Permit for transient (short-term) rental residences. The project will be required to comply with all relevant development and performance standards of the Grant County Unified Development Code. A CUP Compliance Review was completed on February 27, 2012 (Planning File 07-4698-01). It was determined that the applicant was compliant with the conditions of approval set forth in CUP 07-4698 for a temporary event site.
31. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
 - 31.1 The current residence which has been on the property since 1975 and has a 12 person capacity is appropriate for the location.
 - 31.2 The proposal is appropriate in design, character and appearance with the goals and policies for the applicable land use designation. The proposed transient residence will be utilizing an existing structure that appears to have been permitted in 1975 with an addition in 2009.
32. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
 - 32.1 The residence currently has extensive hard landscape and softscape which will continue. There will be no adverse impacts on human or environment.
 - 32.2 The proposed use will not cause significant adverse impacts on the human or natural environment. There is no proposed change in footprint for the existing residence. The project will be conditioned so that the landscaping shall be maintained in order to minimize impacts to human or natural environments.

33. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.
 - 33.1 There will be no adverse effects cause to the environment by the granting of the Conditional Use Permit for this project.
 - 33.2 The cumulative impact of additional requests for like actions will not produce significant adverse effects to the environment provided those similar requests are adequately conditioned, or have appropriate mitigation measures applied to them at the time of approval. This project has been adequately conditioned to minimize impacts to the environment.
34. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
 - 34.1 All of these requirements have been met and complied with in our Conditional Use Permit.
 - 34.2 This proposal will be served by adequate facilities. Access is from Private Road 11.5 NE. Grant County Public Works has conditioned that an approach permit be obtained for County Road access. The Fire Marshal and Building Division provided comments which require fire sprinklers to be installed in the residence; this requirement has been made a Condition of Approval. Storm water will be handled on-site per the WA State Storm Water Manual for Eastern Washington. The applicant has provided a letter from Cobie Hansen of Grant County Septic Design, stating that the existing system will support the house being used as a transient rental. The application was reviewed by the Grant County Health District and the district representative signed the Water & Sewer Availability form indicating adequate provisions for water and sewer on-site.
35. The location, size, and height of buildings, structures, walls and fences and screening vegetation for the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties.
 - 35.1 This property is very rural and therefore already complies with all of these conditions.
 - 35.2 This project will not unreasonably interfere with development or use of neighboring properties. There is no change in footprint proposed for the existing residence. The existing residence on-site complies with all the setbacks and height requirements for the county.
36. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
 - 36.1 We have gone through the legal process to get commercial designation for our road. We have operated the outdoor event business for 15 years without incident.

- 36.2 Pedestrian and vehicular traffic resulting from this project will not be hazardous to the existing traffic in the area. Application materials were sent to Grant County Public Works and they did not provide any comments of concern regarding the project. The proposal is related to the existing approved temporary outdoor event site. According to the application materials, guests that are utilizing the event site will have the option to rent the transient residence. The application is conditioned to ensure the development does not become hazardous for the traffic on Rd 11.5 NE.
37. Land uses, activities, and structures that are allowable as conditional uses must also comply with any required performance standards in GCC § 23.08.
- 37.1 We will comply with all standards.
- 37.2 The application will be conditioned so as to comply with the applicable performance standards. Appropriate conditions of approval have been suggested that will ensure compliance.
38. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70).
- 38.1 We are not within the vicinity of an airport or airfield.
- 38.2 This proposal is not adjacent to an airport/airfield. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport of airfield.
39. The proposal conforms to the standards specified in GCC § 23.12.
- 39.1 We currently comply with the GC 23.12 code.
- 39.2 The project, as conditioned, complies with all applicable development standards found in GCC § 23.12.
40. The Grant County Planning Department recommended approval of the requested permit, subject to the recommended conditions of approval.
41. An open record public hearing after due legal notice was held on February 6, 2019.
42. The entire Planning Staff file was admitted into the record at the public hearing.
43. Appearing and testifying on behalf of the applicant was Shannon Hintz. Ms. Hintz testified that she was one of the Applicants and is a co-owner of the property. Ms. Hintz testified that they are currently compliant with all Conditions allowed by CUP 07-4698 that allows temporary outdoor events. She originally stated that this request was simply to allow individuals attending their temporary outdoor events to rent out this house. She stated that her family would not be living in the home if it was to be used as a rental. She stated that her family would reside in the caretaker residence full time. She stated that it was their plan to rent out their home as a vacation rental all year long. She had no objection to any of the proposed Conditions of Approval.
44. On questioning from the Hearing Examiner, Ms. Hints originally stated that they might like to also have overnight stays on the property in RV's, trailers, campers or tents. It

was explained by the Hearing Examiner that this use of the property was not part of this permit application and was not part of the approval of CUP 07-4698. The Hearing Examiner has set a Condition of Approval prohibiting this type of overnight stays on the Applicant's property.

45. The Hearing Examiner also asked whether or not events would be conducted inside of the transient residence. Ms. Hintz said that it was their desire that events that would involve public and private assembly for which the transient residence would be rented, are contemplated to take place as allowed by their original permit, CUP 07-4698. Per the discussion below, the Hearing Examiner does not believe that use of any indoor facility is permitted by CUP 07-4698.
46. No member of the public appeared at the hearing.
47. This is an application for a Conditional Use Permit to convert the use of a single family residence to the use of a transient residence to allow for, generally speaking, vacation rentals such as a Vacation Rentals By Owner (VRBO) and similar short term vacation rentals. This application is not an application to convert the use of the primary residential structure into a place where weddings, corporate events, and other public and private gatherings can take place.
48. The Grant County Code does not have a definition of a place of public and/or private assembly.
49. Table D set forth in GCUDC 23.04 does not specifically list "places of public or private assembly" in the land use designations.
48. In the Hearing Examiner's Decision in CUP 07-4698, dated June 26, 2007, Finding of Fact 15 specifically indicates that the events proposed for the use on the site are social events such as weddings, wedding receptions, family reunions and company meetings/parties. Specifically, this Finding states "as this is an outdoor site there would be no winter events."
50. Finding of Fact 32 additionally stated "the Applicant does not propose utilizing this facility during the winter months."
51. In CUP 07-4698, the Applicant was specifically requesting a permit for a "temporary outdoor event site" as permitted by the Grant County Code. GCUDC 23.08.400(a) as "a temporary outdoor event is generally defined as any musical, cultural or social outdoors event..." Further, GCUDC 23.08.400(b)(c) and (d) describes various events that may be considered temporary outdoor events. The vast majority of these events are clearly only outdoor events. A small number of the event can be held both indoors and outdoors. The Hearing Examiner believes that the definition set forth in GCUDC 23.08.400(a) would control.
52. Additionally, GCUDC 25.02 defines a temporary outdoor event as an outdoor event.
53. Because this application was not to expand the scope of the permit granted in CUP 07-4698, and was instead only a request to allow the single family residence on the site to be used as a transient residence as allowed by the GCUDC, the Hearing Examiner does not need to determine whether or not the events that are conducted on the site may take

place inside of the transient residence. The Hearing Examiner just notes that neither CUP 07-4698 nor this Decision allow public or private assembly events (such as weddings etc.) inside this transient residence.

54. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. As conditioned, the proposal does conform to the standards specified in Grant County Code Section 23.12.
4. As conditioned, the use will comply with all required performance standards as specified in Grant County Code 23.08.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Conditional Use Permit Application P 18-0377 is hereby APPROVED subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. If any Native American Grave site(s) or archaeological/cultural resources (Indian Artifacts) are found all construction activity shall stop and the owner/developer shall immediately notify the Colville Confederated Tribes and the Washington State Office of Archaeology and Historic Preservation.
2. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Division, including but not limited to:

- 2.1 Project shall comply with Performance and Use Standards pursuant to Grant County Code 23.08.220(c) including but not limited to:
 - 2.1.1. Guest stays shall be limited to less than 30 days.
 - 2.1.2. No more than three (3) guests per bedroom shall be accommodated at any one time.
 - 2.1.3. The transient residence or guest house shall be operated in a way that will prevent unreasonable disturbance to area residents.
 - 2.1.4. Transient accommodations shall meet all local and state regulations, including those pertaining to business licenses and taxes.
 - 2.1.5 Any uses for the subject parcel beyond the scope of this permit/application would require additional review and may require additional permitting from Grant County Development Services.
 - 2.1.5.1 The development authorized through this Conditional Use Permit shall be completed within five (5) years from the approval date of the permit or the approval will become null and void.
 - 2.1.5.2 Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.08, Performance and Use Standards.
 - 2.1.5.3 Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.12, Development Standards. All conditions of approval set forth in Conditional Use Permit 07-4698 approved by the Grant County Hearing Examiner on June 26, 2007 are still in effect and the applicant shall continue to be in compliance.
3. The applicant shall comply with all requirements as deemed necessary by the Grant County Fire Marshal, including but not limited to:
 - 3.1 With the purpose for the current residence to be used as a transient residence, a change of use will need to be done and fire sprinklers would need to be installed in the current residence if it was approved to be used as stated in the letter dated November 26, 2018.
 - 3.2 A residential 13D sprinkler system would be the type that would be used.
4. The applicant shall comply with all requirements as deemed necessary by the Grant County Building Official, including but not limited to:
 - 4.1 For the change of use from a single family residence to an R-1 Occupancy containing sleeping units where the occupants are primarily transient in nature will require a permit, and shall comply with the International building code as adopted at the time of application. This will include but not be limited to a residential fire suppression system for that structure.

5. The applicant shall comply with all requirements deemed necessary by Grant County Public Works, including but not limited to:
 - 5.1 An approach permit shall be obtained for County road access.

6. The applicant shall comply with all requirements deemed necessary by the U.S. Bureau of Reclamation, including but not limited to:
 - 6.1 Construction storm water or runoff of any type from a construction site should not enter any of Reclamation's facilities at any time and must be contained on site.

 - 6.2 Reclamation and the District must review and approve any work that will involve these facilities or the existing rights-of-way prior to commencing such work. Structures are prohibited from encroaching upon existing rights-of-way corridors without Reclamation's and the District's prior approval.

 - 6.3 The agricultural water that supports Farm Unit 55 in Block 40 must only be used for agricultural purposes. The proposed project may render the proposed land ineligible for the agricultural water entitlement authorized by the Project. The proponent is advised to initiate discussions regarding the release of the agricultural water entitlement, by contacting the East Columbia Basin Irrigation District headquarters in Othello, Washington.

7. Use of the single family residence on the site as a transient residence may not occur unless and until a caretaker residence is first constructed and inhabited by the Applicants.

8. All Conditions set forth in CUP 07-4698 shall apply to this Decision except as specifically modified by this Decision.

9. No overnight stays may occur on this site in recreational vehicles, travel trailers, campers or tents, at any time, including but not limited to times in which a temporary outdoor event is being conducted.

10. The Applicants, as the caretakers of the transient residence, must be on site for all nights of rental of the transient residence.

11. The caretaker residence may not be rented or leased for any amount of time.

Dated this 11th day of February, 2019.

GRANT COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Grant County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.