

**GRANT COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
P 19-0009	)	<b>DECISION AND</b>
Weis Towers	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on June 12, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**I. FINDINGS OF FACT**

1. This is an application for a Conditional Use Permit and SEPA Checklist to allow the development of a Wireless Communication Facility (WCF) on an approximately 25.93-acre parcel. Said WCF will include a 190-ft. tall (overall height) guy-anchored lattice-type tower, associated antennas, and ground-level support equipment within a 50-ft. x 50-ft. fenced compound. Each of the three guy anchors will be enclosed by a 5-ft. x 20 ft. fence.
2. The applicant is Weis Towers, Attn: Brian Woods, PO Box 711, Roslyn, WA 98941.
3. The site address of the subject parcel is 53658 Road W NE, Electric City, WA 99123. The site is located in the southeast quarter of Section 21, Township 28N, Range 30E, W.M., Grant County, WA. Parcel #18-2316-000.
4. The zoning for the subject property is Rural Remote.
5. The zoning for neighboring parcels is: To the north, Rural Residential 1; to the south, Rural Remote; to the east, Rural Remote; and to the west, Rural Residential 1.
6. The Comprehensive Plan designation for the subject property is Rural Remote
7. Environmental Review was completed by Grant County Development Services. A SEPA Mitigated Determination of Non-Significance was issued on May 14, 2019. No appeal was filed.
8. The subject parcel was reviewed for Critical Areas and was found to be located within a "Bald Eagle Protection Buffer" of an identified Bald Eagle Roost. Bald Eagles have had a status upgrade and are no longer considered threatened. However, eagles are still protected under the Bald and Golden Eagle Protection Act. As such, the applicant contacted the US Dept. of Fish and Wildlife and it was determined that a Bald and Golden Eagle Permit would not be required for this proposal. That determination can be found in the application materials in attachment A.

Additionally WA State Dept. of Fish and Wildlife determined the tower is proposed on a parcel that is located within a WDFW Priority Habitat and Species mapped polygon that identifies the area as a location utilized by sage grouse. Mr. Pentico of WDFW identified issues with Wind Energy Projects, or large towers, and the sage grouse habitat. There is an existing Communication Tower to the west of this proposed site. Due to the close proximity of an existing tower, the proposed tower will be constructed in an area that is considered to have been already disturbed. The impact of a new tower in a previously disturbed area is considered negligible. The parcel does contain potentially geologically hazardous areas (steep sloped coulee walls) however the proposed tower is located on the lot so that the distance from the base of the facility to any adjoining property line (the cliff edge) is at least 100 percent (190 feet) of the proposed facility height. Additionally, the tower is engineered to be compliant with the currently adopted edition of the ANSI-EIA/TIA-222E for wind speeds. The parcel was not found to be located within 300 feet of any other critical areas.

9. A Public Notice containing information on this project was published in the Columbia Basin Herald on April 22, 2019, was mailed to property owners within 300 feet of the subject property and was posted on the subject property. Information on this project was also mailed to applicable agencies of jurisdiction for their review and comment. The following agencies provided comments:
  - 9.1 Grant County Fire Marshal responded on April 22, 2019.
  - 9.2 Grant County Building Official responded on May 6, 2019.
  - 9.3 Grant County Public Works Department responded on April 24, 2019.
  - 9.4 Grant County Assessor's Office responded on April 24, 2019.
  - 9.5 WA State Dept. of Fish and Wildlife (Ephrata) responded on April 22, 2019 and April 23, 2019.
  - 9.6 WA State Dept. of Ecology (Olympia) responded on May 6, 2019.
  - 9.7 Federal Aviation Administration responded on May 1, 2019.
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 Board
  - 10.6 Grant County P.U.D.
  - 10.7 US Dept. of Fish and Wildlife
  - 10.8 Grant County Fire District #14
  - 10.9 Federal Communications Commission
  - 10.10 WA State Dept. of Transportation
  - 10.11 WA State Dept. of Transportation (Aviation Division)
  - 10.12 WA State Dept. of Arch & Historic Preservation

10.13 Colville Confederated Tribes

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

11.1 **Grant County Building Official:**

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.

11.2 **Grant County Fire Marshal:**

1. I have no adverse comments or concerns for this project.

11.3 **Grant County Public Works:**

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

11.4 **Grant County Assessor's Office:**

1. Parcel 18-2316-000 is a 25.93 acre parcel or classified land only.
2. Owners are Kramer Farm, LLC.
3. No issues.

11.5 **WA State Dept. of Fish and Wildlife:**

1. Please see Attachment B for the comments in their entirety.

11.6 **WA State Dept. of Ecology (Olympia):**

1. Please see Attachment B for the comments in their entirety.

11.7 **Federal Aviation Administration (FAA):**

1. I received your notice of application for the Conditional Use Permit Application (P19-009) and SEPA Checklist (P19-0010). I have attached a form that FAA requires to be filled out and submitted for the proposed constructions and alterations. Instructions are included in the form.
2. A copy of this form can be found in Attachment B.

12. The application was determined to be Technically Complete on April 17, 2019.

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 site is considered previously disturbed by an existing tower in close proximity. The site was not required to obtain a "Bald and Golden Eagle Permit" from U.S. Fish and Wildlife.

15. The proposal is not located within an Urban Growth Area of any city.

16. The project site is located in the Rural Remote Zoning District.

17. Pursuant to GCC 23.04 Table 4, a new wireless communications tower is subject to a Conditional Use Permit in the Rural Remote Zoning District of Grant County.
18. A site visit was conducted on April 19, 2019 by GC Development Services Staff.
19. 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. No adverse comments were expressed by any agency that would prohibit development.
20. Grant County Development Services Staff has 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.
21. The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan because:
  - 21.1 The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan. The project will be required to comply with all relevant development and performance standards of the Grant County Unified Development Code.
22. 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 because:
  - 22.1 The proposal is appropriate in design, character and appearance with the goals and policies for the applicable land use designation. Section 4.4.3.6 of the Comprehensive Plan states that Rural Land Use Designations are characterized by low density residential dwellings, concentrated mixed use areas, isolated commercial and industrial uses, farms, mining areas, outdoor recreation, and other open space activities. This proposed use is an isolated utility use.
23. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval because:
  - 23.1 The proposed use will not cause significant adverse impacts on the human or natural environment. The proposed location is in close proximity to an existing communications tower and is considered a previously disturbed natural environment. This location is remote. The county road access is from Road W NE, 3 miles away from the proposed site.
24. 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 because:
  - 24.1 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.
25. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities because:
  - 25.1 Neither water nor sewer will be on site. The tower site is 4 miles from the access to Road W NE. Access will be recorded along the lease agreement.

- 25.2 This proposal will be served by adequate facilities. Access is from Road W NE. Grant County Public Works has conditioned that an approach permit be obtained for County Road access. The Fire Marshal has no adverse comments or concerns. Storm water will be handled on-site per the WA State Storm Water Manual for Eastern Washington. There is no water or sewer involved in this project.
26. 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 because:
- 26.1 The neighboring properties will not be affected by this proposal.
- 26.2 This project will not unreasonably interfere with development or use of neighboring properties. The proposed tower complies with all the setbacks and height requirements for the county.
27. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood because:
- 27.1 The traffic to these sites is minimal. Only during construction is there traffic. These sites are not in neighborhoods.
- 27.2 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 access is off of Rd W NE though approximately 3 miles of Kramer Farms, LLC owned property.
28. Land uses, activities, and structures that are allowable as conditional uses must also comply with any required performance standards in GCC § 23.08.
- 28.1 The Applicant will comply with all federal, state, and county codes that apply to this project.
- 28.2 The application will be conditioned so as to comply with the applicable performance standards. Appropriate conditions of approval have been set that will ensure compliance.
29. 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) because:
- 29.1 No, this proposal is not adjacent to an airfield.
- 29.2 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 or airfield.
30. The proposal conforms to the standards specified in GCC § 23.12 because:
- 30.1 Yes, it does.
- 30.2 The project, as conditioned, complies with all applicable development standards found in GCC § 23.12.
31. An open record public hearing after due legal notice was held on June 12, 2019.
32. The entire Planning Staff file was admitted into the record at the public hearing.

33. Appearing and testifying on behalf of the applicant was Brian Woods. Mr. Woods testified that he was an agent authorized to appear on behalf of the Applicant as well as the property owner. Mr. Woods indicated that while he had not reviewed the Conditions of Approval, he did not form any objection. Mr. Woods testified that there would be the ability to co-locate different users on this tower.
34. No member of the public appeared at the hearing.
35. 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 proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
4. As conditioned, this proposal does comply with Comprehensive Plan, the zoning code and other land use regulations, and SEPA.
5. 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 19-0009 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 23.08.120, including but not limited to:

- 2.1.1 Facilities shall be located on the lot so that the distance from the base of the facility to any adjoining property line or supporting structure of another facility is at least 100 percent of the proposed facility height. Facilities that cannot satisfy this 100 percent setback may be approved provided that the applicant presents a certification from a licensed structural engineer that the structure is designed for a basic wind speed of 90 mph in accordance with the currently adopted edition of the ANSI-EIA/TIA-222E,
  - 2.2 Project shall comply with Performance and Use Standards pursuant to Grant County Code 23.12.210, including but not limited to:
    - 2.2.1 Height: The applicant shall demonstrate that the support structure is the minimum height required to function satisfactorily. No tower that is taller than this minimum height shall be approved. In no case shall support structure height exceed one hundred (100) feet, except that support structure height may not exceed two hundred (200) feet in Public Open Space (POS), Open Space Conservation (OSC) and Rural Remote (RRem) zoning districts.
    - 2.2.2 Security: Security fencing no less than six (6) feet in height with access through a locked gate shall be required around each support structure and its related equipment. Support structures shall be equipped with an appropriate anti-climbing device.
  - 2.3 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.
  - 2.4 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.
  - 2.5 Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.08, Performance and Use Standards.
  - 2.6 Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.12, Development Standards.
3. The applicant shall comply with all requirements deemed necessary by Grant County Public Works, including but not limited to:
  - 3.1 An approach permit shall be obtained for County road access.
4. The applicant shall comply with all requirements deemed necessary by the Federal Aviation Administration, including but not limited to:
  - 4.1 Please complete and submit the "Notice of Proposed Construction or Alteration" to the Federal Aviation Administration.

Dated this 13<sup>th</sup> day of June, 2019.

GRANT COUNTY HEARING EXAMINER

A handwritten signature in black ink, appearing to read "Andrew L. Kottkamp", written over a horizontal line.

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.**