

**BOARD OF YAKIMA COUNTY COMMISSIONERS**  
**ORDINANCE 7-2017**

IN THE MATTER OF AMENDING YAKIMA COUNTY CODE TITLE 16B, LAST AMENDED BY ORDINANCE NO. 6-2014, PERTAINING TO PROJECT PERMIT APPEALS, INCLUDING SEPA APPEALS.

**WHEREAS**, the Board of Yakima County Commissioners (Board) accepts that the procedures for appeal of project permits and State Environmental Policy Act (SEPA) decisions as required in Yakima County Code (YCC) Title 16B could create confusion as to the process to challenge a SEPA or project permit decision, and thereby impede an equitable resolution of appeals of project approvals; and

**WHEREAS**, to reduce or eliminate such potential, Yakima County planning division staff have drafted revisions to YCC Title 16B (Public Services File No. TXT2017-00005); and

**WHEREAS**, the Board wishes to enhance and clarify the processes for project permit appeals and ensure consistency between the county provisions and state law, including the procedures for SEPA appeals; and

**WHEREAS**, the Board held a duly advertised public hearing for the purpose of considering adopting Ordinance No. 7-2017 amending Yakima County Code Title 16B on July 11, 2017, pursuant to Resolution No. 227-2017 adopted June 20, 2017, wherein testimony was heard from all persons present who wished to be heard; and

**WHEREAS**, the Board deliberated on the proposed legislation after considering all written comments received, the testimony at its public hearing, and staff recommendations; and

**WHEREAS**, the Washington State Department of Commerce has conducted an expedited review of the proposed amendments to YCC Title 16B and found them appropriate for consideration by the Board; and

**WHEREAS**, after considering the testimony and materials presented, the Board believes it is in the public interest to amend Yakima County Code Title 16B; now, therefore,

**BE IT HEREBY ORDAINED BY THE BOARD OF YAKIMA COUNTY COMMISSIONERS:**

**Section 1. Legislative Intent.** The Board's intent and purpose in adopting amendments to Yakima County Code Title 16B as set forth in Section 2 is to establish consistency in the Yakima County Code with the mandates in state law and regulations for the administration and interpretation of project appeals, including SEPA appeals. Those titles, chapters and sections of Yakima County Code not modified by this ordinance remain as originally adopted together with all amendments to date; except that YCC Title 16B shall supersede and replace any other titles, chapters and sections of Yakima County Code that are found by the Administrative Official to be inconsistent with and or to conflict with the provisions of YCC 16B as amended by this Ordinance.

**Section 2. Adoption.** The Board hereby adopts the following amendments to YCC Title 16B to read as set forth in Exhibit "A" to this Ordinance.

**Section 3. Findings.** The Board's findings are as follows:

A. The Board finds that all statutory and County prerequisites for the review and evaluation of YCC Title 16B, as well as the requirements for ensuring adequate public notification and opportunities for comment and participation in the amendment process, have been met.

B. The Board finds the amendments to Yakima County Code made in Section 2 of this Ordinance are related solely to governmental procedures and contain no substantive standards regarding the use or modification of the environment. The adoption of procedural amendments are legislative actions that are exempt from SEPA review, consistent with the provisions of WAC 197-11-800 (19).

C. The Board finds that the procedural amendments to Yakima County Code made in Section 2 of this Ordinance are related solely to governmental procedural amendments, not substantive amendments, and as such are not defined as 'official controls' as that term is used in RCW 36.70.

D. The Board further finds and concludes that adoption and implementation of the procedural amendments to Yakima County Code in Section 2 of this Ordinance is in the public interest and is necessary to maintain compliance with state law and consistent with its objectives for SEPA appeals.

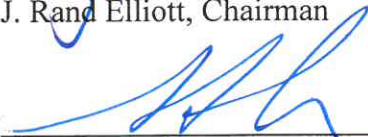
**Section 4. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

**Section 5. Effective date.** This ordinance shall be effective immediately.

DONE this 18<sup>th</sup> day of July, 2017



Attest: Tiera L. Girard  
Clerk of the Board

  
\_\_\_\_\_  
J. Rand Elliott, Chairman  
\_\_\_\_\_  
Ron Anderson, Commissioner  
\_\_\_\_\_  
Michael D. Leita, Commissioner  
*Constituting the Board of County Commissioners  
for Yakima County, Washington*

# Exhibit “A”

The amendments hereby made to YCC 16B.01 through YCC 16B.09 are indicated on the subsequent pages as follows:

- Added language is indicated by blue underlining.
- Deleted language is indicated by ~~red strikethrough~~.
- Moved language is indicated by green: ~~double strikethrough~~ where moved from, double underline where moved to, ~~double underline and strikethrough~~ where moved to and deleted.

**TITLE 16B**

**PROJECT PERMIT ADMINISTRATION**

**Chapters:**

- 16B.01 Purpose and Authority**
- 16B.02 Definitions**
- 16B.03 Classification by Project Permit Type**
- 16B.04 Application Process**
- 16B.05 Public Notice**
- 16B.06 Consistency Analysis and SEPA Integration**
- 16B.07 Final Decisions**
- 16B.08 Open Record Public Hearings**
- 16B.09 Administrative Appeals, Closed Record Hearings, and Judicial Appeals**
- 16B.10 Comprehensive Plan and Regulatory Amendment Procedures**
- 16B.11 Violations and Enforcement**



## Chapter 16B.01

### PURPOSE AND AUTHORITY

#### Sections:

- 16B.01.010 Purpose and Authority.
- 16B.01.020 Applicability.
- 16B.01.030 Legislative Decisions.
- 16B.01.040 Legislative Enactments not Restricted.
- 16B.01.050 Conflict of Provision.

#### **16B.01.010 Purpose and Authority.**

(1) It is the purpose of this Title to effectively and efficiently administer applications for land use development activities (entitled "Project Permit Applications" by this Title) by creating a permit classification system with consistent procedures for similar application types, and by combining the environmental review process (SEPA), both procedural and substantive, with the procedures for review of project applications.

(2) When a project permit application is filed, the project review process shall include land use, environmental, public, and governmental review so that documents prepared under different requirements can be reviewed together by the public and other agencies, in one project review process.

(3) This integrated review process features the following elements.

- (a) A determination of application completeness issued to the applicant within twenty-eight days of application submittal (Chapter 16B.04);
- (b) A combined Notice of Application to the public and agencies with jurisdiction (Chapter 16B.05);
- (c) A determination of the consistency of a proposed project with applicable development regulations and comprehensive plans (Chapter 16B.06);
- (d) An optional consolidated permit review process for development proposals involving more than one application procedure (Section 16B.03.060);
- (e) Provisions for use of existing comprehensive plans and development regulations in the environmental review of proposed projects subject to SEPA (Chapter 16B.06);
- (f) Provisions for joint public hearings or meetings held with other local, state, regional or federal agencies with jurisdiction over a proposed project (Section 16B.08.070);
- (g) A single report stating all the decisions made as of the date of the report on all project permits, including any environmental determinations, on a proposed permit project (Chapter 16B.07);
- (h) Except for the appeal of a Determination of Significance under SEPA, no more than one open record hearing on a project permit (Section 16B.03.050); and,
- (i) A notice of final decision issued within 120 days of the determination of application completeness (Chapter 16B.07).

#### **16B.01.020 Applicability.**

The provisions of this Title shall apply to all applications for land use or environmental permits subject to review under the following Chapters and Titles of the Yakima County Code.

~~(1) Chapter 12.10 – Stormwater Authority.~~

~~(2)~~ Title 16 – Environment.

- (32) Titles 16A and 16C – Critical Areas.
- (43) Title 16D – Yakima County Regional Shoreline Master Program.
- (54) Title 19 – Unified Land Development Code.

**16B.01.030 Legislative Decisions.**

The following actions are legislative, and are not subject to the project permit procedures in Chapters 16B.03, 16B.04, 16B.07, 16B.08, 16B.09 and 16B.11 of this Code, unless otherwise specified:

- (1) Adoption and amendment of development regulations as defined by RCW 36.70A;
- (2) Area-wide rezones to implement new county policies; and
- (3) Adoption of the county comprehensive plan, sub-area plans, other general purpose or specific county plans and any plan amendments.

**16B.01.040 Legislative Enactments not Restricted.**

Nothing in this Title shall limit the authority of the Board of County Commissioners to amend the County's comprehensive plan or development regulations.

**16B.01.050 Conflict of Provision.**

In the event of conflicts between any portion of this Title and other rules, regulations, resolutions, ordinances or statutes lawfully adopted by Yakima County, the procedures contained in this Title shall govern.

## Chapter 16B.02

### DEFINITIONS

#### Sections:

- 16B.02.010 Definitions.
- 16B.02.020 Administrative Official.
- 16B.02.030 Agency with Jurisdiction.
- 16B.02.040 Board of County Commissioners.
- 16B.02.045 Buildable Land.
- 16B.02.050 Closed Record ~~Appeal~~Hearing.
- 16B.02.055 Day.
- 16B.02.060 Decision Maker.
- 16B.02.070 Hearing Examiner.
- 16B.02.080 Open Record Hearing.
- 16B.02.082 Optional Consolidated Permit Review.
- 16B.02.083 Parties of Record.
- 16B.02.085 Policy Plan Map.
- 16B.02.090 Project Permit Application.
- 16B.02.093 Public Meeting.
- 16B.02.095 Reviewing Official.
- 16B.02.100 SEPA.

#### **16B.02.010 Definitions.**

Certain terms and words used in this Title are defined in the following Sections. When not inconsistent with the context, words used in the present tense include the future; the singular includes the plural, and the plural the singular; “shall” is always mandatory and “may” indicates a use of discretion in making a decision. Whenever terms defined elsewhere in the Yakima County Code appear in this Title, they shall be given the meaning attributed to them.

#### **16B.02.020 Administrative Official.**

“Administrative Official” means the Yakima County Planning ~~Director~~ Official or the ~~director’s official’s~~ designee. ~~This term is synonymous with “Director” or “Administrator.”~~

#### **16B.02.030 Agency with Jurisdiction.**

“Agency with Jurisdiction,” for purposes of this Title, means any agency with authority to approve, veto, or finance, all or part of any project permit application as defined by this Title.

#### **16B.02.040 Board of County Commissioners.**

“Board of County Commissioners,” also abbreviated as “BOCC,” or “Board,” is the legislative authority of Yakima County.

#### **16B.02.045 Buildable Land.**

“Buildable Land,” for the purposes of 16B.10.095(2)(a), means land suitable and available for residential, commercial, and industrial uses and includes both vacant land and developed land that, in the opinion of the planning agency, i.e., the Planning Division together with its Planning Commission as defined in RCW 36.70.020(13)(b), is likely to be redeveloped.

#### **16B.02.050 Closed Record ~~Appeal~~Hearing.**

“Closed Record ~~Appeal~~Hearing” means an administrative ~~appeal-or~~ hearing, conducted by the Board of County Commissioners following an open record hearing conducted by the Hearing Examiner on a Type 4 project permit application. The ~~appeal-or~~ hearing is on the evidentiary record developed at the prior open record hearing with no or limited new evidence or information allowed to be submitted and only ~~appeal~~-argument allowed. See also RCW 36.70B.020(4).



**16B.02.055 Day.**

“Day” means calendar day. For purposes of computing any period of time, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the computed period is included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the close of Planning Division business on the next day which is neither a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, the intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

**16B.02.060 Decision Maker.**

“Decision maker” means the person or body that is authorized by this Title to render the final decision on a project permit application. Table 3-1 herein designates the decision maker by project permit procedure type.

**16B.02.070 Hearing Examiner.**

“Hearing Examiner” or “Examiner” means that person appointed by the Board of Commissioners. The Hearing Examiner shall conduct open record hearings on project permit applications.

**16B.02.080 Open Record Hearing.**

“Open record hearing” means a public hearing, conducted by the Hearing Examiner. The hearing creates the evidentiary record pursuant to procedures prescribed by ordinance or resolution. Open record hearings either result in a recommendation to the Board of [County Commissioners \(in the case of Type 4 applications\)](#), or a final decision on a project permit application [\(in the case of Type 3 applications and Type 2 applications that are referred by the Administrative Official\)](#), or constitute an appeal of an administrative decision on a project permit application [\(including its SEPA determination\)](#). See also RCW 36.70B.020(3).

**16B.02.082 Optional Consolidated Permit Review.**

“Optional consolidated permit review” means that process authorized by RCW 36.70B.060 and 36.70B.120 which is the integrated and consolidated review and decision on two or more project permits relating to a proposed project action, including a single application review and approval process covering all project permits requested by an applicant for all or part of a project action.

**16B.02.083 Parties of Record.**

The term “Parties of Record” for the purposes of this Title, shall mean:

- (a) Any person who testified at the open record public hearing on the application; ~~or~~ and
- (b) Any person who submitted written comments in response to the Notice of Application or environmental review; ~~or~~ and
- (c) Any person who submitted written comments concerning the application at the open record public hearing (excluding persons who have only signed petitions or mechanically produced form letters); ~~or~~ and
- (d) Affected agencies ~~and~~ tribes; ~~or~~ and
- (e) The applicant ~~and~~ owner of the property.

**16B.02.085 Policy Plan Map.**

“Policy Plan Map” means the official Future Land Use Map adopted in a comprehensive plan or sub-area plan. This definition includes any overlay maps adopted in a comprehensive plan or sub-area plan.

**16B.02.090 Project Permit Application.**

“Project permit,” or “project permit application,” or “project application,” or “permit,” means any land use or environmental permit or license required for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional use permits, Shoreline permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or sub-area plan, but excluding the adoption or amendment of a comprehensive plan, sub-area

plan, or development regulations except as otherwise specifically included in this Section. See also RCW 36.70B.020(4).

**16B.02.093 Public Meeting.**

“Public meeting” means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government’s decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government’s project permit application file. See also RCW 36.70B.020(5).

**16B.02.095 Reviewing Official.**

“Reviewing Official” means Administrative Official, Building Official, Hearing Examiner, or the Board of County Commissioners, when engaged in any review or decision-making procedure under the provisions of the Titles of Yakima County Code listed in Section 16B.01.020 of this Title.

**16B.02.100 SEPA.**

“SEPA” refers to the State Environmental Policy Act, Chapter 43.21C RCW, its implementing rules (Chapter 197-11 WAC), and the County’s SEPA procedures (Yakima County SEPA Ordinance, Chapter 16.04).



## Chapter 16B.03

### CLASSIFICATION BY PROJECT PERMIT TYPE

#### Sections:

- 16B.03.010 Introduction.
- 16B.03.020 Project Permits Excluded from Some Review Procedures.
- 16B.03.030 Project Permit Procedures – Defined.
- 16B.03.040 Classification of Project Permit Applications.
- 16B.03.050 Limitations on Open Record Public Hearings and Closed Record Appeals.
- 16B.03.060 Optional Consolidated Permit Review Process.
- 16B.03.070 Administrative Interpretations.
- 16B.03.080 Development Agreement Review Procedures.

#### **16B.03.010 Introduction.**

For the purpose of project permit processing, all development permit applications shall be classified as one of the following: Exempt, Type 1, Type 2, Type 3, or Type 4. Legislative decisions are addressed in Sections 16B.01.030 – 16B.01.040.

#### **16B.03.020 Project Permits Excluded from Some Review Procedures.**

(1) All Type 1 applications listed in Table 3-2, building permits or other construction permits, or other similar administrative approvals, that are categorically exempt from environmental review under SEPA, or for which environmental review has been completed in connection with other project permits, are excluded from the following procedures. See also RCW 36.70B.140.

- (a) Notice of Application (Chapter 16B.05);
- (b) Consolidated permit review processing (Section 16B.03.060);
- (c) Joint public hearings (Section 16B.08.070);
- (d) Single report (Notice of Decision) stating all the decisions and recommendations made as of the date of the report (Chapter 16B.07).

(2) All of the review procedures listed in Subsection (1) of this Section apply to Type 1 and other project permits that are not categorically exempt from environmental review under SEPA, unless environmental review has been completed in connection with other project permits. See also RCW 36.70B.140.

(3) The development, activities and modifications to development listed in YCC Section 19.30.020(2) may require project permits under Yakima County Code, but are typically not required to obtain a project permit from the Administrative Official under Title 19.

#### **16B.03.030 Project Permit Procedures – Defined.**

(1) The Administrative Official shall determine the procedural classification (Type 1 – 4) for all development applications. If there is a question as to the appropriate procedure type, the Administrative Official shall resolve it in favor of the higher procedural classification.

(a) Type 1 applications involve ministerial actions and are exempt from public notice requirements. Type 1 applications that are not categorically exempt from environmental review under SEPA are subject to public notice requirements. ~~Final determinations~~ Decisions on the ~~Type 1~~ project permit ~~applications will~~ shall be made by the Administrative Official without a prior public hearing. ~~Final determinations~~ Decisions on Type 1 projects can be appealed to the Hearing Examiner, ~~except as noted in Table 3-1, other sections or Titles.~~

(b) Type 2 applications are administrative actions which may generate public interest. Public notice will be provided for Type 2 actions. ~~The final determination~~ Decisions on Type 2 project permit applications will be made by the Administrative Official without a prior public hearing, unless referred by the Administrative

Official to the Hearing Examiner for final decision in accordance with the Table 3-2 Notes and YCC 19.30.030(3)(b)(v). ~~The Administrative Official's determination~~ Decisions on Type 2 projects can be appealed to the Hearing Examiner. ~~The Hearing Examiner's determination is subject to a closed record appeal to the Board of County Commissioners, except as provided in Subsection (2) below.~~ Public notice will be provided on Type 2 actions.

(c) Type 3 applications are quasi-judicial actions and require an open record hearing by the Hearing Examiner. The Examiner's written decision constitutes the final decision. ~~The Hearing Examiner's determination is subject to a closed record appeal to the Board of County Commissioners, except as provided in Subsection (2) below.~~ Public notice will be provided on Type 3 actions.

(d) Type 4 Project permit applications are quasi-judicial actions which require an open record hearing before the Hearing Examiner. The Examiner's written decision constitutes a recommendation to the Board of County Commissioners, ~~except as provided in Subsection (2) below.~~ The Board shall conduct a closed record hearing to act on the Examiner's recommendation. Public notice will be provided on Type 4 actions.

~~(e) Final administrative decisions may be appealed to Superior Court pursuant to Section 16B.09.060 of this Code.~~

(2) Any administrative appeals of SEPA determinations related to Type 1, 2, or 3 applications will be conducted in accordance with YCC 16B.09. ~~Type 4 decisions and their related SEPA determinations are not subject to administrative appeal. Decisions of the Hearing Examiner shall be final and binding and not subject to further administrative appeal even in the event that the underlying project permit application may be subject to further administrative appeal processes. Further appeal of the Hearing Examiner's decision on a SEPA administrative appeal shall be to Superior Court pursuant to Ch. 36.70C RCW, unless state law provides for a different appeal process. (see Table 3-1).~~

(3) Final administrative decisions on Type 1, 2, 3, and 4 applications and their related SEPA determinations are indicated in Table 3-1.

(4) Table 3-1 identifies the final decision maker, recommending body, hearing body, and appeal body for the four procedural types. Table 3-2 identifies the procedural classification for the various land use permits. Notice provisions for each procedural classification are contained in Table 5-1.

Table 3-1

Procedures for Type 1, 2, 3, and 4 Permit Applications

Process Type	Public Notice	Recommending Body	Open Record Hearing Body	Decision Maker	Project Permit Appeal Body	SEPA Appeal Body
Type 1	N/A	N/A	N/A	Administrative Official <sup>(1)(2)</sup>	Hearing Examiner <sup>(1)</sup> (Open Record Hearing)	Hearing Examiner <sup>(1)</sup> (Open Record Hearing)
Type 2	Yes	N/A	N/A	Administrative Official	Hearing Examiner <sup>(2)</sup> (Open Record Hearing)	Hearing Examiner <sup>(1)</sup> (Open Record Hearing)
Type 3	Yes	Administrative Official	Hearing Examiner	Hearing Examiner (Open Record Hearing)	No administrative appeal BOCC (Closed Record Hearing)	Hearing Examiner <sup>(1)</sup> (Open Record Hearing)
Type 4	Yes	Hearing Examiner	Hearing Examiner	BOCC (Closed Record Hearing)	Superior Court No administrative appeal	No administrative appeal

Notes:



- (1) ~~Type 1 Shoreline exemptions are not subject to appeal. Appeal determinations by the Hearing Examiner on Type 1 and Type 2 applications and on Type 3 SEPA appeals shall be final and binding and not subject to further administrative appeal.~~
- (2) ~~Appeal determinations by the Hearing Examiner on Type 2 applications may be further appealed to the Board of Yakima County Commissioners for a closed record appeal in accordance with YCC 16B.09.050. Appeal determinations of the Hearing Examiner on Type 1 appeals shall be final and binding and not subject to further administrative appeal. Final administrative decisions may be appealed to Superior Court pursuant to Ch. 36.70C RCW, unless state law provides for a different appeal process.~~
- (3) Not all Type 1 project permits decisions are made by the Administrative Official. Refer to Title 19.

#### 16B.03.040 Classification of Project Permit Applications.

The following project permits or actions are subject to the decision making processes specified in Table 3-1 and Section 16B.03.030 of this Code, except where indicated in other Titles.

Table 3-2

Table of Procedural Classifications

Title 19 – Yakima County Unified Land Development Code Type 1 Review <sup>(2,4,7)</sup>
Type 1 Permitted Uses shown in the land use table in YCC Chapter 19.14 except when Type 2 review is required (19.30.030(1)(c))
Interpretations and similar use determinations by the Administrative Official (Chapter 19.31)
Reconstruction of damaged buildings or structures not involving expansion or nonconforming use (19.33.050(2)(d))
Legal Nonconforming use determination by the Administrative Official (19.33.060(1)(a))
Replacement or restoration of legal nonconforming dwelling (19.33.060(6)(a))
Utility divisions (19.34.090)
Boundary Line Adjustments (19.34.020)
Minor amendments of approved preliminary plats (19.34.050(9)(b))
Final Subdivisions and Short Subdivision <sup>(1)</sup> (19.34.070)
Segregations within an approved Binding Site Plan for commercial or industrial development (19.34.080(3)(b))
ESLU Setback modifications exceptions (19.35.020(6)(d))
Administrative Modifications to existing or approved uses (19.35.030(3))
Minor modification to a previously approved Master Planned Resort, Resort Development Plan or Planned Development (19.35.050(1))
Future Projects or actions in compliance with an approved Master Development Plan or Development Agreement (19.35.055(1))
Type 1 Uses require Type 2 review when: <sup>(3,4,7)</sup>
All or part of the development, except for agricultural buildings, single-family dwellings and duplexes are located within the 100 year floodplain or the Greenway Overlay (GO) District (19.17.050);
All or part of a development that is in a Master Planned Development Overlay (MPDO) District and is identified in a development agreement requiring Type 2 review (19.17.040);
The Reviewing Official cannot determine from the application submitted that the use will meet the approval standards in Section 19.30.090;
The permitted use could be approved subject to broader conditioning authority (19.30.100);
The Administrative Official cannot conclusively determine the legal status of a nonconforming use (19.33.060(1)(c));
The proposed use includes hazardous material as defined in Section 19.01.070.

<b>Type 2 review<sup>(3,4,5)</sup></b>	
Type 2 <b>Administrative Uses</b> shown on the land use table in Chapter 19.14 are generally allowed in the zoning district	
<b>Change of a legal non-conforming use</b> to another non-allowed use subject to review criteria in Subsection 19.33.060(5)(b)	
<b>Amendments to an approved preliminary short subdivision</b> (19.34.040(5)) <sup>(11)</sup>	
<b>Alteration or vacation of a recorded short plat</b> (19.34.040(9)) <sup>(11)</sup>	
<b>New Binding Site Plans</b> for commercial and industrial development (19.34.080)	
<b>Administrative Adjustments</b> to standards authorized (19.35.020)	
<b>Type 3 Review</b>	
<b>Conditional Uses</b> shown on the land use table in Chapter 19.14	
<b>Plat vacations or alterations</b> under Chapter 58.17 RCW	
<b>Major modifications</b> to a Master Development Plan or Development Agreement (19.35.055(3))	
<b>Type 4 Review<sup>(10)</sup></b>	
<b>Type 4 Quasi-judicial uses or development</b> shown on the land use table in Chapter 19.14	
<b>Master Planned Resorts</b> (MPRs) in rural or resource areas (19.11.050)	
<b>New or expanded Master Planned Developments</b> in Urban Growth Areas (19.17.040)	
<b>Subdivision Applications</b> (19.34.050) <sup>(12)</sup>	
<b>Major amendments</b> to approved preliminary subdivision (19.34.050(9)(c)) <sup>(11)</sup>	
<b>Major modification to a Master Planned Resort</b> or Planned Development (19.35.050(2))	
<b>Major modifications</b> to a Master Development Plan or Development Agreement (19.35.055(3))	
<b>Minor Rezones</b> (19.36.030) <sup>(10)</sup>	
<b>Title 16 – Chapter 16.04 – Yakima County SEPA Ordinance</b>	
<b>Application</b>	<b>Process Type</b>
Environmental Review (SEPA Checklist)	Type 2 <sup>(7)</sup>
<b>Titles 16A and 16C – Yakima County Critical Areas Ordinance<sup>(15)</sup> and Title 16D – Yakima County Regional Shoreline Master Program</b>	
<b>Application</b>	<b>Process Type</b>
<b>Floodprone Permit</b> (16A.05) <sup>(14)</sup>	Type 1
<b>Floodprone Development Variance</b> (16C.05.52 or 16A.05.52) & (16D.05.52) <sup>(14)</sup>	Type 2 <sup>(4)</sup>
<b>Flood Hazard Permit</b> (16C.05.44.040 or 16A.05.44) & (16D.05.44.050) <sup>(14)</sup>	Type 1
<b>Standard Development Permit</b> (16C.03.20 or 16A.03.10)	Type 1 <sup>(6)</sup>
<b>Critical Areas Adjustment</b> (16C.03.23 or 16A.03.13 & 16A.04.25)	Type 2
<b>Critical Areas Reasonable Use Exception</b> (16C.03.24)	Type 3
<b>Minor Revision to approved uses/development</b> (16C.03.25 or 16A.03.15) & (16D.03.25)	Type 1

<b>Non-Conforming Use/Facility Alteration</b> (16C.03.26) & (16D.03.26)	Type 2 <sup>(8)</sup>
<b>Non-Conforming Structures or Areas</b> (16C.03.26 or 16A.03.26) & (16D.05.40.020)	Type 2 <sup>(9)</sup>
<b>Shoreline Exemption</b> (16D.03.05) & Exemption from Critical Area development authorizations (16A.01.06)	Type 1 <sup>(15)</sup>
<b>Shoreline Substantial Development Permit</b> (16D.03.19 & 16D.10.05 & Table 10-1)	Type 2 <sup>(4)</sup>
<b>Shoreline Conditional Use Permit</b> (16D.03.21 & 16D.10.05 & 16D Table 10-1)	Type 2
<b>Shoreline Variance</b> (16D.03.22)	Type 2

Notes:

- (1) Final plat applications are subject to determination of completeness as required by Section 16B.04.030 – 060. However, once the application is deemed complete, i.e. – all requirements of the preliminary plat resolution as signed by the BOCC have been met, the final plat is forwarded to the BOCC for signature at its next regular agenda meeting.
- (2) The Administrative Official reviews applications subject to Type 1 review under the procedures of Section 19.30.090 and YCC Chapter 16B.03 for compliance with Title 19. Type 1 Uses listed in Subsection 19.30.030(1)(d) are generally not subject to project review by the Administrative Official provided all applicable standards of the Title are met and/or when categorically exempt from environmental review under YCC Section 16.04.100, or for which environmental review has been completed in connection with other project permits, and when locating on an existing lot.
- (3) The compatibility between a Type 2 Administrative Use and the surrounding environment cannot always be determined in advance. Therefore, a Type 2 Administrative Use may be conditioned to ensure compatibility and compliance with the provisions of the zoning district and the goals, objectives and policies of the Comprehensive Plan.
- (4) Type 2 review, Administrative Use applications, Floodprone (as defined in YCC Titles 16A, 16C and 16D) Development Variances, Zoning Variances, Administrative Adjustments and Substantial Development permits may be referred by the Administrative Official to the Hearing Examiner for final decision, in a manner similar to a Type 3 application.
- (5) Type 3 review required for Type 2 Administrative Uses referred by the Administrative Official for Hearing Examiner review and for other specific reviews established by Title 19. Such referred reviews are subject to the criteria of 19.30.020(2)(b)(iv) for Type 2 uses.
- (6) Standard Development permits under the Critical Areas Ordinance may be processed for final decision as Type 2 project permits rather than as Type 1 permits at the discretion of the Administrative Official.
- (7) SEPA determinations where the underlying permit is Type 1 shall be circulated to agencies with expertise or jurisdiction as defined in WAC 197-11-714 and listed in YCC 16B.05.030(3) but notice to adjacent property owners is not required.
- (8) The term “alteration” in a zoning context may include changing from one nonconforming use to another nonconforming use, but does not include intensification. Certain nonconforming use alterations may not be subject to additional critical area or Shoreline review as described in YCC 16C.03.26(2)(b) and 16D.03.26(2)(b).
- (9) No additional Critical Area or Shoreline review required if reconstruction cost of a conforming use with a nonconforming structure or area is less than 75 percent of value before damage or destruction. See YCC 16C.03.26(2)(a) and 16D.03.26(2)(a).
- (10) The process for review of Type 4 applications shall be as set forth in YCC Subsection 16B.03.030(1)(d) and Section 19.30.080 and the process for Minor Rezone applications shall be as set forth in Section 19.36.030.
- (11) Minor changes or correction of errors to approved preliminary short plats and alteration or vacation of recorded short plats not involving a change in lot lines or conditions may be made by the surveyor through the Type 1 review process by recording an affidavit with the County Auditor referencing the short plat by number and the correction.
- (12) Administrative preliminary plat review is authorized under Section 19.34.040(11).
- (13) Critical Areas Titles 16A or 16C may apply to property based on agricultural use. Refer to Title 16C to determine jurisdiction.
- (14) The Building Official issues flood hazard permits under Chapter 5 of Titles 16A, 16C and 16D. (N)

~~(15) Shoreline exemptions are not subject to appeal.~~



**16B.03.050 Limitations on Open Record Public Hearings and Closed Record ~~Appeals~~Hearings.**

Except for the appeal of a SEPA Determination of Significance, no more than one consolidated open record appeal or hearing may occur on SEPA threshold determinations or project permit decisions and no more than one consolidated closed record ~~appeal or~~ hearing may occur on project permit decisions.

**16B.03.060 Optional Consolidated Permit Review Process.**

Two or more project permits relating to a proposed project action may be processed collectively under the highest numbered category of project permit required for any part of the proposal or processed individually under each of the procedures identified by the code. The applicant may determine whether the project permits shall be processed collectively or individually. If the application is processed under the individual procedure option, the highest numbered type procedure must be processed prior to and separately from the subsequent lower numbered procedure. Construction permits may be issued only after all other required land-use decisions have been made and all applicable appeal periods have passed.

**16B.03.070 Administrative Interpretations.**

Upon request the applicable official designated in Subsections 2 through 4 of this Section shall issue a formal written interpretation of a development regulation. The purpose of an interpretation is to clarify conflicting or ambiguous wording or the scope or intent of the County Code.

(1) The interpretation request shall be on a form provided by the Planning Division and shall include identification of the regulation in question, a description of the property (if applicable), a clear statement of the issue or question to be decided, a statement addressing why an interpretation is necessary and shall set forth a legal and factual basis in support of the proposed interpretation.

(2) The Administrative Official or his/her designee shall interpret and apply the provisions of YCC Title 16 (SEPA) Environment, Titles 16A and 16C – Critical Areas Ordinances, Title 16B – Project Permit Administration, Title 16D – Yakima County Regional Shoreline Master Program, and Title 19 – Unified Land Development Code. Interpretations shall be first presented to the Administrative Official but are subject to appeal to the Hearing Examiner.

(3) The Administrative Official is authorized under Chapter 19.31 to determine whether a proposed use is not classified in any category of the land use table in Chapter 19.14 but is consistent in character with the purpose of the Zoning District.

(4) The Hearing Examiner shall issue similar use interpretations regarding any provisions of the Yakima County Unified Land Development Code (Title 19), as specified by Chapter 19.31, and any interpretation matter referred by the Administrative Official. The Hearing Examiner shall determine when a hearing is required for such interpretations. Interpretations by the Hearing Examiner are final and not subject to further administrative appeal.

(5) An interpretation of the provisions of a development regulation shall not be used to amend any development regulation in Yakima County Code, such as any provision affecting required location of land uses or review requirements. Administrative interpretations may be specific to the fact situation presented in the request for the interpretation and therefore may not apply to circumstances or situations other than that considered in the interpretation.

(6) In making an interpretation of the provisions of the development regulation, the Reviewing Official shall state the analysis and reasons upon which the interpretation is based in considering the following factors:

- (a) The applicable provisions of development regulations in Yakima County Code including their purpose and context; and
- (b) The impact of the interpretation on other provisions of Yakima County Code; and
- (c) The implications of the interpretation for development within the County as a whole; and
- (d) The applicable provisions of the Comprehensive Plan and other relevant codes and policies; and

- (e) Any other factors the Reviewing Official wishes to consider.

**16B.03.080 Development Agreement Review Procedures.**

(1) The County may enter into a development agreement with a person having ownership or legal control of real property within its jurisdiction or outside its jurisdiction as part of an outside utility service agreement. A development agreement sets forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.

(2) Notice of the hearing shall be provided by publishing in a newspaper of general circulation within the County in the manner prescribed for project permits in YCC 16B.05.030.

(3) The determination of completeness under YCC 16B.04.030, notice of decision under YCC 16B.07.010 and time frame of YCC 16B.07.030 do not apply to development agreements.

(4) When a request for a development agreement is consolidated with a ~~Type 3 or 4~~ project permit, or a modification to a development agreement is proposed, the public hearing shall be conducted by the hearing body indicated in Table 3-3 after notice as indicated in Table 5-1.

Table 3-3

Public Hearing Procedure When Development Agreements Are Consolidated With Project Permits

<u>Process Type</u>	<u>Hearing Body</u>	<u>Procedure</u>
<u>Type 1</u>	<u>Board</u>	<u>The Administrative Official will provide a recommendation to the Board and incorporate the Board's decision on the development agreement into the decision on the project permit.</u>
<u>Type 2</u>	<u>Board</u>	<u>The Administrative Official will provide a recommendation to the Board and incorporate the Board's decision on the development agreement into the decision on the project permit.</u>
<u>Type 3 (and Type 2 elevated to Type 3 review)</u>	<u>Hearing Examiner (consolidated with open record hearing)</u>	<u>The Hearing Examiner will consider the development agreement during the open record hearing on the project permit and will make a recommendation to the Board on the development agreement; and approval of the project permit shall be conditioned on the Board's approval of the development agreement.</u>
<u>Type 4</u>	<u>Hearing Examiner (consolidated with open record hearing)</u>	<u>The Hearing Examiner will consider the development agreement during the open record hearing on the project permit and will make a recommendation to the Board on the development agreement; and the Board's approval of the project permit shall be conditioned on the Board's approval of the development agreement.</u>

~~consolidated with the open record hearing on the permit before the Hearing Examiner. The Hearing Examiner shall make a recommendation to the BOCC on the development agreement and approval of the project permit shall be conditioned on BOCC approval of the development permit.~~

- (5) The BOCC may approve a development agreement by ordinance or resolution only.



## Chapter 16B.04

### APPLICATION PROCESS

Sections:

- 16B.04.010 Pre-application Conference.
- 16B.04.020 Application, Withdrawal of Application and Refunds.
- 16B.04.030 Determination of Completeness.
- 16B.04.040 “Complete” Application – Additional Information.
- 16B.04.050 Incomplete Application Procedure.
- 16B.04.060 Date of Acceptance of “Complete” Application.
- 16B.04.070 Identification of Other Agencies with Jurisdiction.

**16B.04.010 Pre-application Conference.**

(1) Prior to formal submittal of a project permit application, an applicant may obtain early assistance from County staff through informal conversations or on-site visits. In addition, one or more conferences with appropriate County department representatives and other public agency representatives may be requested by the applicant, required by ordinance, or required at the discretion of the Administrative Official. The date, time and place of such conferences shall be at the ~~mutual~~ agreement of the participants. While pre-application conferences are optional on some application types, applicants for those applications specified in YCC Section 19.30.040(1), Type 3 and 4 project permits, legislative actions described in YCC Chapter 16B.10, linear transmission facilities, critical areas and Shoreline permits are required to request this exploratory conference. The Administrative Official may waive in writing the requirement for a pre-application conference, upon written request by the owner or authorized prospective applicant, for projects that the Administrative Official determines are of a size and complexity to not require the detailed analysis of a pre-application conference, notwithstanding any provision of this Code to the contrary.

(2) Such conferences are intended as an informal discussion and review of possible applications to assist the applicant in discovery of appropriate county regulations, standards, application materials and review processes that would be required of a project. The pre-application conference is intended to provide an applicant with preliminary direction regarding the required content of the proposed application. However, the conference is not intended to provide an exhaustive review of all the potential issues that a given application could raise. A pre-application conference shall not include extensive field inspection or correspondence. The pre-application review does not prevent the County from applying all relevant laws to the application and does not constitute an approval of the project. The discussion at the conference and the information provided shall not bind or prohibit the County’s future application or enforcement of all applicable laws and regulations.

(3) Such conferences are not publicized and the public is not permitted to attend in order that a potential applicant’s interests be protected.

(4) A request for a pre-application conference is initiated by completing a pre-application form supplied by the Planning Division. The submittal requirements for pre-application conferences shall include a site plan of the entire project, a written narrative describing the proposal, other information as specified by the Administrative Official, and any additional information that the applicant wishes to provide.

(5) The conference will be held within thirty days of the pre-application conference request. The applicant shall be informed of the time and place of the meeting using the contact information provided on the pre-application conference request form.

(6) A pre-application conference does not vest a proposed project permit application. Pre-application submittals or materials do not constitute project permit applications. All project permit applications are vested under relevant County codes in effect at the time of filing a completed application.

**16B.04.020 Application, Withdrawal of Application and Refunds.**

(1) Applications for project permits shall be submitted upon forms provided by the Administrative Official. An application shall consist of all materials required by the applicable development regulations, and shall include the following general information.

- (a) A completed project permit application form signed by the owner(s) of the property;
- (b) The completed application will identify a single contact person or entity to receive determinations and notices required by this Chapter;
- (c) All other items listed as application requirements in the relevant Sections of the ordinance requiring review;
- (d) A site plan showing all parcels containing the site for all applications, as required by the applicable development regulations;
- (e) The applicable fee;
- (f) Any SEPA documents, as applicable.

(2) Who May Apply. Application for the various types of permits and approvals covered by this Code may be made by the following parties:

- (a) Subject to the requirements of this Subsection, the property owner or any agent of the owner with proof of agency may apply for a Type 1, 2, 3, or 4 permit or for a site-specific rezone requiring a policy plan map amendment not involving a change to Urban Growth Area boundaries. If the application is for revision to a preliminary plat, or alteration of a final plat, the application must be signed by a majority of those persons having an ownership interest in the lots, tracts, parcels, or portion thereof to be revised or altered. If a final plat is subject to restrictive covenants which were filed at the time of the approval of the plat, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement, with notarized signatures signed by all persons subject to the covenants, providing that those persons agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the plat or portion thereof. An application for vacation of a final plat is subject to the requirements of RCW 58.17.212.
- (b) A resident of the dwelling may apply for a home occupation permit.
- (c) Any person may apply for an interpretation pursuant to YCC 16B.03.070. In addition, the Administrative Official may issue interpretations of the County Code as needed.
- (d) Any person may apply to propose a non-site-specific amendment to the Comprehensive Plan pursuant to the biennial procedure for consideration of Comprehensive Plan amendments set forth in YCC Chapter 16B.10.
- (e) The Board of County Commissioners may direct staff to pursue the study of or amendment to the Comprehensive Plan and development regulations. The Planning Commission or the Administrative Official may recommend a comprehensive plan amendment, site-specific or area-wide rezone, or amendment to the text of any development regulation to the Board.

(3) An applicant may formally withdraw a project permit application upon written request directed to the Administrative Official.

(4) A request for a refund of a project permit application fee, except those issued pursuant to Title 12 or 13 of this Code, must be made in writing to the Planning Division. It shall be provided to the Planning Division prior to the issuance of a final decision by the Reviewing Official and within ninety days of the date the applicant is notified of the Administrative Official's determination of completeness pursuant to Section 16B.04.030 of this Chapter. The written request will include a basis for the refund, will identify the project for which the refund is requested, and the request must come from the same person or entity that paid the fee, or authorized agent specified on the application. If a fee is collected in error, the applicable fee will be refunded. All other refunds are reviewed and awarded at the

discretion of the Administrative Official or his designee, and in any amount the Official or his designee determines to be appropriate.

**16B.04.030 Determination of Completeness.**

The Administrative Official shall determine whether a project permit application is complete and provide notice to the applicant in accordance with the procedure in RCW 36.70B.070.

**16B.04.040 “Complete” Application – Additional Information.**

A project permit application shall be deemed complete for purposes of this Section when it meets the submission requirements specified in Section 16B.04.020 above, as well as the submission requirements contained in the applicable development regulations. This determination of completeness shall be made when the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The Administrative Official’s determination of completeness shall not preclude the County from requesting additional information or studies either at the time of the notice of completeness or at some later time, if new information is required or where there are substantial changes in the proposed action.

**16B.04.050 Incomplete Application Procedure.**

(1) Within fourteen days after an applicant has submitted requested additional information, the Administrative Official shall make the determination of completeness as described in Section 16B.04.030 above, and notify the applicant in the same manner.

(2) A project permit application for which a decision has not yet been made may be canceled for inactivity if the County returns the application for modification or correction (including a request for additional information for an incomplete or complete application) and the applicant fails to respond to the County’s request within forty-five days of the request.

**16B.04.060 Date of Acceptance of “Complete” Application.**

When the project permit application is complete, the Administrative Official shall accept it and note the date of acceptance.

**16B.04.070 Identification of Other Agencies with Jurisdiction.**

To the extent known by the Administrative Official, other agencies with jurisdiction over the project permit application shall be identified in the County’s determination of completeness required by Section 16B.04.030.



## Chapter 16B.05

### PUBLIC NOTICE

Sections:

- 16B.05.010 Notice of Application.
- 16B.05.020 Contents of Notice of Application and Other Notices.
- 16B.05.030 Method of Public Notice by Application and Action Type.
- 16B.05.040 Public Comment on the Notice of Application.
- 16B.05.050 Public Notice of Closed Record Hearings ~~and Appeals~~.

**16B.05.010 Notice of Application.**

- (1) Yakima County shall issue a notice of application on all Type 2, 3, and 4 project types within fourteen (14) days after the County has made a determination of completeness on the project permit application.
- (2) Yakima County shall issue a Notice of Application within fourteen days of the County's determination of completeness for projects for which a comment period or an open record pre-decision hearing is required as part of a consolidated permit review process as described in Section 16B.03.060 of this Code.
- (3) For projects not exempt from environmental review under SEPA, the notice of environmental review and determinations shall be provided in accordance with this Chapter, Chapter 16.04 and Chapter 16B.06 of this Code, including a required notice of application. If the highest numbered permit underlying the SEPA review is a Type 1 permit, construction permit or another similar administrative permit or license, the notice of application shall be issued using the method identified in YCC 16B.05.030(1) within fourteen days of the County's determination of completeness.
- (4) If an open record pre-decision hearing is required for the requested project permit(s), the Notice of Application shall be provided at least fifteen days prior to the open record hearing.
- (5) The applicant shall be responsible for providing services or materials to assist the County in carrying out the public notice requirements as requested, such as posting the site.
- (6) The applicant shall be responsible for the following costs of providing public notice:
  - (a) Postage fees;
  - (b) Publication fees;
  - (c) Photocopies and printing costs; and
  - (d) Documented staff time involved in preparing, sending and implementing notice procedures.

**16B.05.020 Contents of Notice of Application and Other Notices.**

The Notice of Application and other notices required in this Chapter shall include the items required by RCW 36.70B.110 (2) and the following:

- (1) For projects subject to SEPA review, the Notice of Application may include a preliminary SEPA determination if one has been made at the time pursuant to RCW 36.70B.060 and WAC 197-11-355;
- (2) A statement of the limits of the public comment period, which shall be fourteen calendar days following the date of the Notice of Application, unless a greater comment period is required by state law, except that a 30-day comment period shall be provided in the event of any project permit or action located within 500 feet of the perimeter of the Yakima Training Center. Nothing in this Section shall preclude the County from accepting public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(3) If the County as lead agency has a reasonable basis for determining that significant adverse environmental impacts are unlikely at the outset of project permit application review, the optional process under RCW 36.70B.060 and WAC 197-11-355 may be used to combine the comment periods on the Notice of Application and SEPA. In such instances, a second comment period under SEPA will typically not be required when the threshold determination is issued. Where the optional process is used, the contents of the notice of application shall include the items required by WAC 197-11-355(2)(a) and (b).

The Notice of Application and environmental checklist shall be circulated as required under Title 16 of this Code and shall be subject to the notice requirements of this Title.

**16B.05.030 Method of Public Notice by Application and Action Type.**

(1) Public notice of project permit applications and amendments to comprehensive plans and development regulations described in YCC Chapter 16B.10, shall be provided in the manner specified in Table 5-1.

(a) Any project permit or other action that is not categorically exempt from SEPA requires public notice. If no notice of application is required, then a threshold determination may serve as the required public notice. The threshold determination and checklist shall be circulated to agencies with jurisdiction or expertise as defined in WAC 197-11-714 and listed in YCC 16B.05.030 (3)(a)(iii) through (vi). If public notice is not required as part of any underlying permit or action related to the SEPA review, no other method of public notice, such as publishing or notice to adjacent property owners, shall be required.

(b) Notice of the availability of a draft or supplemental environmental impact statement under YCC 16.04.180 shall be provided using the methods listed in WAC 197-11-510(1)(a) through (c) and may be combined with the Notice of Application or hearing on the underlying permit or legislative action.

(2) Table 5-1 may require more than one type of notice for some applications. In the case of conflicts between Table 5-1 below and other notice provisions contained in other Titles of Yakima County Code or provisions in State law, the most lengthy and greater notice requirements shall apply.

**Table 5-1**

**Notice of Environmental Review and Notice of Application or Proposal  
– Method of Public Notice**

<b>Application Process Type</b>	<b>Mailing <sup>(2)</sup></b>	<b>Posting of Property</b>	<b>Published in Newspaper</b>
Type 1	No <sup>(1),(3)</sup>	No	No
Type 2	Yes <sup>(1)</sup>	No	No
Type 3	Yes	Yes	Yes
Type 4	Yes	Yes	Yes
Development Agreement	No	No	Yes
Site-specific policy plan map amendment	Yes <sup>(4)</sup>	Yes	Yes
Legislative action	Yes <sup>(5)</sup>	No	Yes

**Notes:**

- (1) In case of an open record appeal hearing of a Type 1 or Type 2 project permit, notice will be provided to property owners described in Subsection (3)(a)(~~iv~~) of this Section.
- (2) Project permits and other actions that are subject to environmental review (SEPA) shall have the threshold determination and checklist associated with the project permit or action circulated to the applicant and to agencies with jurisdiction or expertise as defined in WAC 197-11-714 and listed in Subsections (3)(a)(iii) through (vi) of this Section.

- (3) If the underlying permit is a Type 1, road approach, grading or building permit for which no other project permit application is required, APO notice of a SEPA determination shall not be required.
  - (4) Notice of site-specific policy plan map amendment proposals shall be provided according to YCC 16B.10.080 and to adjacent property owners described in Subsection (3)(a)(i) of this Section.
  - (5) Notice of policy plan map amendments and text amendments described in YCC Chapter 16B.10 shall be provided according to YCC 16B.10.080.
- (3) Notice of Application or Notice of Site-Specific Policy Plan Map Amendment – Mailing.
- (a) When required, written notice of the application or amendment will be sent as specified in Subsection (c) below by the Planning Division to the following parties:
    - (i) Adjacent property owners (APO) of real property, as listed on the most current Yakima County Assessor records, located as follows:
      - (A) For all project permits or site-specific amendments, notice of the proposal shall be sent to all owners of property located within 300 feet of any portion of the boundary of the proposed project permit application or amendment site. If the owner of the proposed project permit or amendment site also owns another parcel or parcels of real property adjacent to the proposed project permit or amendment site, notice shall be given to owners of real property located within 300 feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the proposed project permit or amendment site;
      - (B) For linear transmission facility projects, notice of the proposal shall be sent to all owners of property located within 660 feet from the centerline of the linear transmission facility;
      - (C) Where establishing a Mining Zoning District, notice of the proposal shall be sent to all owners of property located within one-half mile of the boundaries of the subject property, or of the boundaries of any contiguous properties under the same mining operation, and to owners adjacent to any private access roads that would serve as haul roads;
      - (D) Where establishing or modifying a mineral batching, processing or mining/site operation, notice of the proposal shall be sent to all owners of property located within one-half mile of the boundaries of the subject property, or of the boundaries of any contiguous properties under the same mining operation, and to owners adjacent to any private roads that would serve as haul roads.
    - (ii) The contact person for the permit application;
    - (iii) Interested or affected public agencies with jurisdiction;
    - (iv) Affected Indian tribes;
    - (v) Cities or towns within one mile of the proposal; and
    - (vi) The installation commander of the Yakima Training Center in the event of any project permit or action located within 500 feet of the perimeter of the Yakima Training Center.
  - (b) If the open record hearing date is not specified in the Notice of Application or notice of proposed policy plan map amendment, a second notification listing the open record hearing date must be sent through first-class mail, electronic mail or postcard at least fifteen days prior to the first public hearing on Type 3 and Type 4 project applications, or at least ten days prior to a public hearing before the Planning Commission or BOCC on site-specific plan amendment proposals. This notice must be sent to those parties who were originally sent a Notice of Application or amendment.
  - (c) The written Notice of Application shall be sent through first-class mail. The County, may, however, provide notification by electronic mail when requested by the recipient.



(4) Posting of Project or Posting of Site-Specific Policy Plan Map Amendment Site. Posting of the project site may be required prior to an open record public hearing on Type 3 and 4 project applications and is required prior to a public hearing before the Planning Commission or BOCC on site-specific plan amendment proposals described in YCC Chapter 16B.10. Posting is not required for Urban Growth Area amendments. Posting, when required, shall consist of signs provided by the Planning Division which shall be placed by the applicant at least fifteen days prior to the date of the public hearing on project applications, or at least ten days prior to a public hearing before the Planning Commission or BOCC on site-specific plan amendment proposals. Signs shall be posted on the subject property so as to be clearly seen from each right-of-way providing primary vehicular access to the subject property. The posted notice shall identify the project action or proposed amendment and contain other such information required by law and additional information required by the Reviewing Official. The applicant shall be responsible for removal of the posted notice upon the conclusion of the hearing.

(5) Publication Notice. When required, public notice of project permit applications and site-specific policy plan map amendments shall be published in a newspaper of general circulation in the general area of the proposal. Notice of a project permit application may be published in a local land use newsletter published by Yakima County in lieu of publication in a newspaper of general circulation. The notice shall be published once, at least fifteen days prior to the date of the first public hearing on the underlying project permit or at least ten days prior to a public hearing before the Planning Commission or BOCC for legislative actions described in YCC Chapter 16B.10. This notice shall include the project location or other description of the site in other than a legal description, a brief description of the project, type of permit(s) required, comment period dates, hearing dates if applicable, and a location where the complete application may be reviewed.

(6) Closed Record Public Hearing Notice. Public notice of closed record public hearings ~~and closed record appeals~~ will be provided in accordance with Section 16B.05.050 of this Chapter.

**16B.05.040 Public Comment on the Notice of Application.**

All public comments received by the Planning Division by close of business on the last day of the comment period must be considered. Comments may be mailed, personally delivered or sent by facsimile. To be considered, comments must identify the name and physical or post office address of the sender. Comments should be as specific as possible.

**16B.05.050 Public Notice of Closed Record Hearings ~~and Appeals~~.**

Public notice of closed record ~~appeal~~ hearings will be provided by first-class, electronic or postcard mailing to "parties of record" only as defined by ~~Section 16B.09.020(2)~~ [Chapter 16B.02](#) of this Title. The public notice shall state the limitation of the period for submittal of written memoranda of authorities in accordance with Sections 2.23.140 and 16B.09.055 of this Code.

## Chapter 16B.06

### CONSISTENCY ANALYSIS AND SEPA INTEGRATION

#### Sections:

- 16B.06.010 Scope of Project Review/Project Consistency.
- 16B.06.020 Project Consistency.
- 16B.06.030 SEPA Integration – Purpose.
- 16B.06.040 Use of Existing Environmental Documents.
- 16B.06.050 Planned Actions.
- 16B.06.060 Issuance of SEPA Threshold Determinations.
- 16B.06.070 Appeals of SEPA Determinations.

#### **16B.06.010 Scope of Project Review/Project Consistency.**

(1) Fundamental land use planning choices made in the adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations and the adopted comprehensive plan shall serve as the starting point for project review. Land use permit review shall not reanalyze these land use planning choices in making a permit decision.

(2) The Reviewing Official may determine through the local project review process that existing requirements including mitigation measures in applicable development regulations and plans and other applicable laws provide adequate mitigation for some or all of a project's specific adverse environmental impacts.

(3) Project review shall be used to:

- (a) Review and document consistency with comprehensive plans and development regulations;
- (b) Provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level;
- (c) Ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures;
- (d) Identify specific project design and conditions relating to the characteristics of a development;
- (e) Identify specific adverse environmental impacts of the proposal not previously analyzed; and
- (f) Address the details of site plans, curb cuts, drainage swales, transportation demand management, or other measures to avoid or otherwise mitigate a proposal's probable adverse environmental impacts.

(4) Nothing in this Title limits the authority of the County to approve, condition, or deny a project as provided in its adopted development regulations and in its policies adopted under RCW 43.21C.060 (SEPA) and Chapters 90.58 (Shoreline Management Act) and 36.70A RCW (Growth Management Act).

#### **16B.06.020 Project Consistency.**

The County shall incorporate the elements of RCW 36.70B.040 in its project review. This Chapter does not apply to the County's enforcement procedures.

#### **16B.06.030 SEPA Integration – Purpose.**

Environmental review for projects determined not to be categorically exempt under SEPA (RCW 43.21C and Yakima County Code Chapter 16.04) shall be integrated and run concurrently with the permit procedures of this Title.



**16B.06.040 Use of Existing Environmental Documents.**

As provided by WAC 197-11-158, the Administrative Official may determine that existing comprehensive plans, sub-area plan elements of a comprehensive plan, development regulations, or other local, state or federal rules or laws provide adequate analysis and mitigation of the specific probable adverse environmental impacts of a proposed action.

**16B.06.050 Planned Actions.**

Projects defined as “planned actions” under WAC 197-11-164, 168 and 172 do not require a threshold determination or the preparation of an environmental impact statement under RCW Chapter 43.21C, but are subject to environmental review and mitigation as provided in the course of project review.

**16B.06.060 Issuance of SEPA Threshold Determinations.**

(1) Expiration of Notice of Application Comment Period. Except for a Determination of Significance (DS), Yakima County may not issue its SEPA threshold determination or issue a decision or a recommendation on a project permit until the expiration of the public comment period on the Notice of Application.

(2) Preliminary SEPA Determination and Notice of Application. To integrate project and environmental review under SEPA and to encourage early public comment on project applications, a preliminary SEPA determination may be provided by the Administrative Official with the Notice of Application if such preliminary SEPA determination has been made at the time the Notice of Application is issued pursuant to the optional process in RCW 36.70B.060 and WAC 197-11-355. This preliminary SEPA determination may not substitute for the actual SEPA threshold determination, although the comment period for SEPA and the Notice of Application may be consolidated into a single fourteen-day comment period, as provided in Section 16B.05.020 above.

(3) SEPA Determination of Significance (DS) and Notice of Application. If Yakima County has made a SEPA Determination of Significance (DS) concurrently with the Notice of Application, the Notice of Application shall be combined with the Determination of Significance and scoping notice. Nothing in this Subsection prevents a Determination of Significance and scoping notice from being issued prior to a Notice of Application.

(4) Public Hearing on Project Permit. If an open record pre-decision hearing is required on the underlying project permit application, Yakima County shall issue its threshold determination at least fifteen days prior to the open record pre-decision hearing.

(5) A SEPA determination shall be deemed to be conclusively in compliance with SEPA, the SEPA rules, and the provisions of YCC Chapter 16.04, unless a SEPA appeal is filed in accordance with this Chapter or Chapter 36.70C RCW.

**16B.06.070 Appeals of SEPA Determinations.**

Administrative SEPA appeals to the Hearing Examiner only are hereby established. It is the purpose of this Section to combine environmental considerations with public-project decisions, and for this reason, any appeal brought under this Section shall be linked to a specific governmental action. Appeals under this Section are not intended to create a cause of action unrelated to a specific governmental action. The administrative appeal procedures provided by this Section shall be construed consistently with RCW 43.21C.075, Chapter 36.70B RCW, and WAC 197-11-680.

(1) Types of Appeals. Appeals under the provisions of this Section shall be limited solely to procedural determinations listed in Subsection 16B.06.070(1)(a) below and/or substantive determinations, as defined in YCC 16.04.040(8), within those procedural determinations listed below. ~~Administrative appeals of threshold determinations on Type 1 or 2 project permits or on legislative actions are not allowed.~~

(a) Only one consolidated administrative appeal proceeding on threshold determinations consisting of a Determination of Non-significance (DNS), Mitigated Determination of Non-significance (MDNS), ~~or Determination of Significance (DS)~~, or on a determination of adequacy of a final environmental impact statement (EIS), is authorized pursuant to RCW 43.21C.075.

(b) Procedural appeals are limited to those challenging the Responsible Official’s compliance with the provisions of SEPA, the SEPA rules, and YCC Chapter 16.04 with respect to the threshold determination.



(c) The opportunity for administrative appeals of substantive determinations shall be limited to the appeal period following the procedural determinations listed in Subsection 16B.06.070(1)(a) above.

(d) No administrative appeals shall be allowed at other times for other actions and/or determinations taken or made pursuant to YCC Chapter 16.04 (such as lead agency determination, a determination that a proposal is categorically exempt, scoping, draft EIS adequacy, etc.).

(2) Hearing Examiner. All appeals shall be heard by the Hearing Examiner in an open record hearing [as prescribed in 16B.03.030\(2\) and Table 3-1](#). The decision of the Hearing Examiner on a SEPA appeal shall be final and binding and not subject to further administrative appeal. ~~Further appeal of the Hearing Examiner's decision on a SEPA administrative appeal shall be to Superior Court pursuant to Chapter 36.70C RCW, unless State law provides for a different appeal process.~~ This Section formally eliminates SEPA administrative appeals to the Board of County Commissioners. Such appeals are subject to the provisions of Chapters 16B.08 and 16B.09 of this Title and the Hearing Examiner's adopted rules and procedures.

(3) Consolidated Appeals:

(a) All allowed SEPA-related appeals, other than of a DS, shall be consolidated with the open record hearing on the underlying project application in a single simultaneous hearing before the Hearing Examiner where he will consider either the Administrative Official's decision or a recommendation on the proposed underlying governmental action. ~~If no hearing on the underlying governmental action is otherwise provided, then no SEPA appeal is allowed under this Section, except as allowed under Subsection (b) of this Subsection.~~

(b) DS appeals shall be heard in a separate open record hearing prior to the open record hearing, if applicable, on the underlying project application. The purpose of this early and separate appeal hearing is to resolve the need for an environmental impact statement (EIS), and to permit administrative and judicial review, prior to preparation of an EIS.

(4) Notice of Appeal – Timing and Contents. All SEPA appeals provided under this Section shall be filed in writing with the Yakima County Planning Division, shall comply with the appeal period timing and content requirements of YCC 16B.09.010 and shall be accompanied by the filing fee established by YCC Title 20. Such appeals must identify specific SEPA actions, omissions, conditions or determinations.

(5) Administration – Standard of Review.

(a) Any open record hearing shall be recorded or transcribed.

(b) All testimony shall be sworn.

(c) The Hearing Examiner shall issue a written decision containing findings and conclusions.

(d) The determination of the Responsible Official shall carry substantial weight, and the appellant shall bear the burden to establish a violation of SEPA, the SEPA rules, or the provisions of YCC Chapter 16.04.

(e) The Hearing Examiner may:

(i) Affirm the determination of the Responsible Official where the Hearing Examiner determines that no violation of SEPA, the SEPA rules, or the provisions of YCC Chapter 16.04 exists,

(ii) Modify the determination of the Responsible Official,

(iii) Reverse the determination of the Responsible Official, and may issue a revised DS, DNS or MDNS,

(iv) Request additional information pursuant to WAC 197-11-335, and continue the hearing pending the delivery of such information within a specified time frame, or

- (v) Remand to the Responsible Official with a recommendation as appropriate. The decision of the Hearing Examiner to remand the SEPA determination shall be a final administrative decision not subject to further administrative appeal.

## Chapter 16B.07

### FINAL DECISIONS

Sections:

- 16B.07.010 Notice of Decision – Public Notice.
- 16B.07.020 Reserved.
- 16B.07.030 Notice of Decision – Time Frames.
- 16B.07.040 Exceptions from 120-Day Time Period.
- 16B.07.050 Compliance, Extension, Expiration and Reinstatement.

**16B.07.010 Notice of Decision – Public Notice.**

The Notice of Decision shall be a single report which complies with RCW 36.70B.130 and states all the decisions made on all project permits that are a part of the application. The County shall provide notice of its decision by first-class mail to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application in accordance with RCW 36.70B.130. The County may, however, provide notification by electronic mail when requested by the recipient. The Notice of Decision shall state any mitigation required under applicable development regulations or under SEPA. If a SEPA threshold determination has not been issued previously by the local government, the Notice of Decision shall include this determination. Notice of administrative appeal procedures, if applicable, shall also be included in the Notice of Decision.

**16B.07.020 Reserved.**

**16B.07.030 Notice of Decision – Time Frames.**

(1) The Notice of Decision shall be issued within one hundred twenty calendar days after the County notifies the applicant that the application is complete, except preliminary and final plats, which are subject to the time frames in RCW 58.17.140.

(2) In determining the number of days that have elapsed after the local government has notified the applicant that the application is complete for purposes of calculating the time for issuance of the Notice of Decision, the following periods shall be excluded.

(a) Any period during which the applicant has been requested by the County to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the County notifies the applicant of the need for additional information until the earlier of the date the local government determines whether the additional information satisfies the request for information or fourteen days after the date the information has been provided to the County;

(b) If the County determines that the additional information submitted by the applicant is insufficient, it shall notify the applicant of the continued deficiencies and the procedures under Subsection (a) above shall apply as if a new request for studies had been made;

(c) Any period during which an environmental impact statement is being prepared following a Determination of Significance pursuant to Chapter 43.21C RCW, if the County by ordinance has established time periods for completion of environmental impact statements, or if the local government and the applicant in writing agree to a time period for completion of an environmental impact statement;

(d) Any period for administrative appeals of project permits, if an open record appeal hearing ~~or a closed record appeal, or both, are~~ is allowed. The time period for consideration and decision on appeals shall not exceed:

(i) ~~Ninety calendar days for an open record appeal hearing; and~~

(ii) ~~Sixty calendar days for a closed record appeal.~~



The parties may agree to extend these time periods.

(3) If the County is unable to issue its final decision on a project permit application within the time limits provided for in this Section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the Notice of Decision.

**16B.07.040 Exceptions from 120-Day Time Period.**

The time limits established in Section 16B.07.030 do not apply if a project permit application:

- (1) Requires an amendment to the comprehensive plan or a development regulation;
- (2) Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200; or
- (3) Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete under Sections 16B.04.020 – 16B.04.040.

**16B.07.050 Compliance, Extension, Expiration and Reinstatement.**

(1) Compliance with Conditions and Safeguards of Project Permit. It is the affirmative duty of a project permit holder and the land owner (as applicant) to comply with any conditions made a part of the terms under which the approval of a project permit was granted as authorized by Yakima County Code. The applicant shall complete all required conditions, submit documentation that all conditions were met and request County inspection or review to determine that the requirements have been fulfilled within the timeframe specified in the decision and any authorized extensions. When the conditions of the project permit have been met within the timeframe specified by the decision and any subsequent extension authorized by the applicable code, the applicant shall provide a letter certifying that the conditions were met to the Administrative Official to document compliance.

(2) Extension of Any Approved Project Permit. A valid project permit, other than a preliminary plat, may be extended one time only for up to one additional year by action of the Administrative Official.

(a) Requests for extensions shall be made in writing, shall be submitted to the Planning Division prior to the expiration date and shall be accompanied by the final approved site plan showing the location and size of any development or work already completed on the project. Such extension request shall present a timeline that identifies when each of the conditions of the decision has or will be completed and shall detail unique and special circumstances that prohibited the commencement or completion, or both, of the use authorized.

(b) The Administrative Official shall review the request without public notice or hearing and issue the decision within fourteen days from the receipt of the completed request. The Administrative Official may:

- (i) Approve the extension based on a work schedule provided by the applicant to assure the work will be completed according to a modified schedule, or
- (ii) Disapprove the extension.

(c) The Administrative Official shall mail the decision to the applicant and shall specify the decision as final unless appealed to the Hearing Examiner under the provisions of Chapter 16B.09 of this Title. Conditions of approval listed previously in the notice of decision issued pursuant to 16B.07.010 through 16B.07.030 of this Chapter may be appealed only according to the procedures and time periods specified in YCC 16B.09.010 and are not subject to appeal again following any decision or determination of the Administrative Official made under this Section 16B.07.050.

(3) Failure to Complete Approved Permit Conditions within Specified Timeframe and Failure to Comply with Permit Decisions or Conditions.

(a) Expiration. If compliance with the terms of the project permit approval has not occurred within the timeframe specified by the decision and any subsequent extension authorized by the applicable code, the

project shall be considered expired by time limitation and the land use approval shall be null and void. Expiration of a project permit granted pursuant to Yakima County Code shall not be subject to appeal.

(b) Violations. A project permit issued or processed pursuant to any applicable Title listed in YCC 16B.01.020 will be deemed in violation of this Code if it is ascertained that the application included any false information material to the project permit approval, or if it develops that the conditions and safeguards made a part of the terms under which the approval was granted are not being maintained. Such violations of project permit approval shall be subject to Chapter 16B.11 and other remedies available to Yakima County under any applicable law to enforce conditions of permit approvals, remedy land use and code violations or abate those violations including without limitation YCC Title 13.

(c) Compliance Agreement. The applicant and the County may enter into a compliance agreement to complete the required conditions subject to appropriate fees to compensate the County in preparing, recording and implementing the compliance agreement. On terms acceptable to the Administrative Official, in his or her sole discretion, the County may offer an extension of time to complete the required conditions of approval subject to appropriate fees to compensate the County in preparing, recording and implementing any such compliance agreement; provided, however, that no compliance agreement may be used in lieu of the permit process to remove or negotiate conditions of approval.

(4) Reinstatement. Where a project permit has expired, the applicant may apply to have the permit reinstated and the work authorized by the original permit can be recommenced, provided the following are met:

(a) The applicant submits a written request not more than sixty days after the original permit or authorized extension expired.

(b) The applicant provides a timeline for successful achievement of all conditions upon which the Administrative Official can agree.

(c) The codes under which the original permit was issued and other laws which are enforced by Yakima County have not been amended in any manner which affects the work authorized by the original permit.

(d) No changes have been made or will be made in the original plans and specifications for such work.

(e) The applicant submits a reinstatement fee. The fee for a reinstated permit shall be seventy percent of the amount required for a new project permit pursuant to YCC Title 20.

(f) Where the request for reinstatement does not comply with all of the preceding criteria in this Subsection, a new project permit application must be submitted and processed as a new project, at full permit fees.

## Chapter 16B.08

### OPEN RECORD PUBLIC HEARINGS

#### Sections:

- 16B.08.010 Generally.
- 16B.08.020 Responsibility of Administrative Official for Hearing.
- 16B.08.030 Order of Proceedings.
- 16B.08.040 Burden of Proof – Open Record Hearings.
- 16B.08.050 Hearing Examiner Decisions and Recommendations.
- 16B.08.060 Site View of Subject Property.
- 16B.08.070 Joint Public Hearings.

#### **16B.08.010 Generally.**

Open record public hearings shall be conducted in accordance with this Chapter.

#### **16B.08.020 Responsibility of Administrative Official for Hearing.**

Upon the filing of a project permit application requiring a public hearing, the Administrative Official shall set the time and place for the public hearing and shall provide notice of the hearing as set forth in Chapter 16B.05. The Administrative Official shall also prepare a staff report on the application and present this staff report at the public hearing. This staff report will incorporate recommendations on the project permit application, any mitigation measures recommended under the County's development regulations or under the authority of SEPA, and the County's final SEPA determination on the project permit application, if applicable.

#### **16B.08.030 Order of Proceedings.**

Public hearings shall be conducted in accordance with the Hearing Examiner's rules of procedure and shall serve to create or supplement an evidentiary record upon which the Hearing Examiner will base his or her decision. The Hearing Examiner shall open the public hearing and, in general, observe the following sequence of events:

- (1) Staff presentation, including submittal of any administrative reports. The Hearing Examiner may ask questions of the staff.
- (2) Applicant presentation, including submittal of any materials. The Hearing Examiner may ask questions of the applicant.
- (3) Testimony or comments by the public relative to the matter being heard. Questions directed to the staff or the applicant shall be posed by the Hearing Examiner at his/her discretion.
- (4) Rebuttal, response or clarifying statements by the staff and the applicant. The Hearing Examiner may further question a person submitting information or the staff if opportunity for rebuttal is provided.
- (5) The public hearing portion of the hearing shall be closed and the Hearing Examiner may deliberate on the matter.

#### **16B.08.040 Burden of Proof – Open Record Hearings.**

The burden of proof is on the applicant [for Type 3 and 4 applications](#), or, in the case of an open record appeal on the appellant.

#### **16B.08.050 Hearing Examiner Decisions and Recommendations.**

- (1) Following the open record public hearing, the Hearing Examiner shall approve, conditionally approve, or deny the application, or recommend approval or denial of the application. The Hearing Examiner shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the applicable decision criteria of the Yakima County Code. The applicant carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall deny the application.



(2) Each final decision of the Hearing Examiner body shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the County's comprehensive plan(s) and development regulations.

(3) Each final decision of the Hearing Examiner, unless a longer period is mutually agreed to in writing by the applicant and the hearing body, shall be rendered within fourteen days following the conclusion of all testimony and the hearing on the project permit application.

**16B.08.060 Site View of Subject Property.**

The Hearing Examiner may view the subject property with or without notification to the parties, but the circumstances of such site view shall be placed on the record.

**16B.08.070 Joint Public Hearings.**

(1) The Administrative Official may combine any public hearing on a project permit application with any hearing that may be held by another local, state, regional, federal, or other agency with jurisdiction on the proposed action. Hearings shall be combined if requested by an applicant, provided that:

- (a) The hearing is held within the geographic boundaries of Yakima County;
- (b) Each agency is not expressly prohibited by statute from doing so;
- (c) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule;
- (d) Each agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing; and
- (e) The joint hearing can be held within the required time periods or the applicant may agree to a particular schedule in the event that additional time is needed in order to combine the hearings.

(2) All agencies participating in a combined hearing may issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, or take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

## Chapter 16B.09

### ADMINISTRATIVE APPEALS, CLOSED RECORD HEARINGS, AND JUDICIAL APPEALS

#### Sections:

- 16B.09.010 Administrative Appeal of Project Permits and Environmental Determinations.
- 16B.09.020 Standing to Initiate Administrative Appeals.
- 16B.09.030 Notice of Appeal.
- 16B.09.040 Open Record Appeals.
- 16B.09.045 Open Record Appeal Procedures.
- 16B.09.050 Closed Record Decisions and Appeals.
- 16B.09.055 ~~Closed Record Appeal Procedures~~Reserved.
- 16B.09.060 Judicial Appeals.
- 16B.09.070 Appeals Standards and Criteria.

#### **16B.09.010 Administrative Appeal of Project Permits and Environmental Determinations.**

(1) An appeal of a Type 1, 2, or 3 project decision or an appeal of a final environmental determination (SEPA) shall be filed with the Planning Division within fourteen calendar days of the mailing of the final decision or environmental determination issued under SEPA. If the decision does not require mailing, the appeal shall be filed within fourteen calendar days following the issuance of the final decision. Appeals shall be delivered to the Planning Division by mail or personal delivery before close of business on the last day of the appeal period. Project permit applications shall be appealable to the appeal body designated in Table 3-1. For appeals of SEPA threshold determinations, see also Section 16B.06.070 of this Title.

(a) If the final decision incorporates the SEPA threshold determination subject to a fourteen-day comment period, a joint twenty-one calendar day appeal period shall be provided on both the project decision and the SEPA threshold determination.

(b) If the optional process is exercised, and the County determines that no additional comment period is warranted, the appeal process for SEPA and the underlying decision shall be fourteen calendar days from the date of issuance of the SEPA threshold determination.

(2) All appeals shall be in writing, accompanied by an appeal fee, and contain the following information:

(a) Appellant's name, address, and phone number;

(b) Appellant's statement establishing standing to initiate the appeal under Section 16B.09.020 of this Chapter;

(c) An identification of the specific proposal and specific actions, omissions, conditions or determinations for which appeal is sought;

(d) Appellant's statement of the particular grounds for the appeal, setting forth the principal points of appeal and addressing why the appellant believes the decision to be wrong; and

(e) The desired outcome or relief sought by the appellant.

(f) SEPA appeals shall additionally contain the information required by YCC 16B.06.070(4).

(3) The appellant shall bear the burden of proving the decision was made in error.

(4) Upon the timely filing of a completed appeal, the Administrative Official shall set the time and place for the matter to be considered by the appeal body.

(5) The timely filing of an appeal shall stay all actions by the Administrative Official or the Building Official on pending applications for development permits associated with the action or decision being appealed. The filing of an appeal shall not stay the effectiveness or effective date of any enforcement action or decision of violation including cancellations and revocations of permits or approvals.

**16B.09.020 Standing to Initiate Administrative Appeals.**

~~(1)~~ Standing to initiate an Administrative Appeal is limited to:

- (a) The applicant or owner of the property in which the project permit is proposed;
- (b) The Planning Division, Yakima County Prosecuting Attorney or Board of Yakima County Commissioners; and
- (c) Parties of record aggrieved by the final decision and who will suffer direct and substantial impacts from approval or denial of the project.

~~(2)~~ The term “parties of record” for the purposes of this Title, shall mean:

- ~~(a) Any person who testified at the open record public hearing on the application; or~~
- ~~(b) Any person who submitted written comments in response to the Notice of Application or environmental review; or~~
- ~~(c) Any person who submitted written comments concerning the application at the open record public hearing (excluding persons who have only signed petitions or mechanically produced form letters); or~~
- ~~(d) Affected agencies or tribes; or~~
- ~~(e) The applicant or owner of the property.~~

**16B.09.030 Notice of Appeal.**

In the case of an open record appeal hearing of a Type 1 or Type 2 project permit, public notice will be provided by the Administrative Official to property owners in accordance with the within 300 ft. of the project site. ~~Public notice of closed record appeal hearings will be provided only to parties of record as defined by Subsection 16B.09.020(2) of this Chapter. Public notice requirements are further addressed in Chapter Section 16B.05.030.~~

**16B.09.040 Open Record Appeals.**

(1) Open record appeals on Type 1 and 2 project permits and environmental determinations (SEPA) shall be heard by the Hearing Examiner. Open record appeals shall be conducted in accordance with Sections 16B.08.030 – 16B.08.060 and 16B.09.045 of this Code for open record public hearings and the adopted rules and procedures of the Hearing Examiner. New evidence or testimony may be given or received at this public hearing. Written argument or memoranda of authority may only be submitted pursuant to YCC 16B.09.045.

(2) The decision of the Hearing Examiner on any SEPA appeal or on any Type 1, 2, and 3 project permit appeal shall be final and not subject to further administrative appeal.

**16B.09.045 Open Record Appeal Procedures.**

The following procedures (Subsections 1 through 3) shall apply to any appeal heard by the Examiner under this Title unless the Examiner holds a prehearing conference under Subsection 4 of this Section and issues an order establishing the appeal procedure.

(1) Memorandum to Examiner. Within ten days of filing the appeal, the appellant shall file with the Planning Division a memorandum setting forth the appellant’s arguments and authority. The appellant’s memorandum to the Hearing Examiner shall clearly identify whether the subjects of the appeal are concerned either with procedural



issues or substantive determinations, or both, as defined in YCC 16.04.040. Such arguments and authority shall be restricted to those issues set forth in appellant's written appeal statement;

(2) Staff Report. At least twenty days prior to the date of the scheduled hearing before the Examiner, County staff shall file with the office of the Hearing Examiner and provide the appellant with a staff report responding to the appellant's memorandum concerning the appeal; and

(3) Reply Memorandum. At least ten days prior to the date of the scheduled hearing before the Examiner, the appellant or landowner may file with the Planning Division any reply memorandum which the appellant or landowner desires to file. The scope of the reply memorandum shall be restricted to responding to issues raised in the staff report.

(4) Prehearing Conference. Any party may request a prehearing conference not later than ten days following the filing of appeal. The prehearing conference may be held at the discretion of the Examiner, in consultation with the Administrative Official. If the Examiner exercises his discretion to hold a prehearing conference on an appeal the Examiner may issue an order establishing the procedure and schedule for the hearing and for the submittal of reports by County staff, applicant, and appellant, not inconsistent with this Title. The Examiner's order shall provide for the submittal of appellant's memorandum setting forth the appellant's arguments and authority, a County staff report responding to appellant's memorandum, applicant's memorandum responding to the appellant's memorandum, and appellant's reply memorandum. All written reports shall be submitted prior to the appeal hearing, consistent with the terms of the order. The parties shall provide copies of all submitted material to the other parties.

(5) Failure to Comply. Failure to comply with the requirements of this Section may result in the Examiner taking such action in regard to the failure as is appropriate including, but not limited to dismissing the matter, continuing the hearing, postponing the hearing or limiting testimony at the hearing. The Hearing Examiner or Yakima County may require any appellant(s) who cause(s) a delay in the proceedings by not adhering to the submittal schedule to pay all additional fees associated with rescheduling meetings, including Hearing Examiner fees.

#### **16B.09.050 Closed Record Decisions ~~and Appeals~~.**

(1) Closed record ~~appeals or closed record~~ hearings shall be on the evidentiary record established at the prior open record hearing. The record before the Board shall include all materials received in evidence at any previous stage of the review, audio/visual tapes of the prior hearing, ~~a transcript in the case of an appeal~~, the Hearing Examiner's ~~determination or recommendation~~, and argument by the parties at the Examiner's hearing. ~~Upon receipt of a written appeal of a Hearing Examiner's decision on a Type 3 permit or a Type 2 appeal, the Board will decide how it will dispose of the appeal based on the record of the Hearing Examiner's decision and in accordance with this Section and YCC 16B.09.055.~~

~~(a) The Board may decide to affirm the Hearing Examiner's decision based on its review of the written request and transcript without a public hearing, further written brief or oral argument. The appellant and parties of record shall be so notified in the manner provided by YCC 16B.05.050; or,~~

~~(b) The Board may elect to consider the appeal based on the record of proceedings before the Hearing Examiner, the written appeal statement, any written memoranda of authorities submitted in compliance with the schedule of YCC 16B.09.055 and oral argument at a closed record public hearing. The appellant and other parties of record shall be notified of the Board's decision to consider the appeal, the invitation of written memoranda and its final decision on the appeal after its consideration in the manner provided by YCC 16B.05.050.~~

(2) Oral argument at a closed record public hearing is limited to parties of record. Oral argument is allowed on a Type 4 recommendation of the Hearing Examiner. ~~and may be allowed for a closed record appeal in accordance with YCC 16B.09.055(7) if the Board chooses to conduct a public hearing.~~

(3) The Board's action on a closed record hearing ~~or appeal~~ shall be as follows:



(a) — Following the Board's closed record hearing on a Type 4 recommendation of the Hearing Examiner, the Board may affirm the recommendation of the Hearing Examiner, ~~remand the matter back to the Hearing Examiner with appropriate directions,~~ or may reverse or modify the Hearing Examiner's recommendation.

(b) — Following the Board's review of a closed record appeal of a Hearing Examiner's Type 2 or 3 decision, the Board may grant the appeal or grant the appeal with modifications if the appellant has carried the burden of proof and the Board finds that the recommendation or determination of the Hearing Examiner is not supported by material and substantial evidence. ~~In all other cases, the appeal shall be denied.~~

(4) If the Board renders a decision different from the Hearing Examiner's ~~determination or~~ recommendation, the Board shall adopt amended findings and conclusions accordingly. If the Board affirms the Examiner's determination or recommendation, it may adopt the findings and determinations or recommendations of the Examiner as the final decision.

(5) The Board's final written decision shall constitute a final administrative action for the purposes of Chapter 36.70C RCW.

**16B.09.055 Reserved. Closed Record Appeal Procedures.**

~~The following procedures shall apply to any appeal considered by the Board of County Commissioners:~~

(1) — Appeal Statement. The appellant's written appeal statement shall specify the claimed error(s) or issue(s) which are being appealed and shall specifically state all the grounds for such appeal, limited to stating why the record does or does not support the decision of the Hearing Examiner because the decision:

(a) — ~~Was based on improper procedures that prejudiced the appellant;~~

(b) — ~~Was not based on substantial evidence; or~~

(c) — ~~Constitutes clearly erroneous application of the development regulations to the proposed project.~~

~~Issues or grounds of appeal which are not so identified shall not be considered by the Board.~~

(2) — Transcript. The appellant shall order preparation of a written transcript or portion of the transcript agreed upon by the appellant and Administrative Official. The transcription must be performed and certified by a County approved transcriber. In addition, the certified transcription must be received by the Administrative Official directly from the transcriber not more than thirty days following receipt of the appeal statement.

(a) — ~~The Administrative Official shall maintain a list of pre-approved transcribers that are court approved; and if needed, shall coordinate with parties to the appeal so that no more than one official transcription is admitted into the record.~~

(b) — ~~The cost of the transcript must be paid by the appellant within five days of receipt of the transcriber's statement for the cost. Upon payment of the statement the transcriber will deliver a copy of the transcript to the Administrative Official. If the statement is not paid, the appeal will be dismissed.~~

(3) — Disposition of Appeal. The Administrative Official will consult with the Clerk of the Board who shall set the date, time and place at which the matter will be considered. Copies of the record, to the extent practicable, will be furnished by the Administrative Official to the Board, the appellant and the applicant. At the next regular meeting of the Board following receipt of the record from the Administrative Official, the Board will decide at a public meeting whether to affirm the decision of the Hearing Examiner, or to invite written memoranda of authorities and direct the Clerk to schedule a closed record public hearing.

(4) — Notice of Hearing. If the Board decides to invite written memoranda of authorities and conduct a closed record public hearing in accordance with YCC 16B.09.050, the Planning Division shall notify the parties of record that an appeal has been filed and that copies of the notice of appeal and any written argument or memorandum of authorities accompanying the notice of appeal may be obtained from the Planning Division. The notice to parties shall also state



that parties of record wishing to respond to the appeal may submit written argument or memorandum to the Planning Division at least fourteen days prior to the date of the scheduled hearing before the Board. The notice shall further specify that such written argument or memorandum shall not include the presentation of new evidence and shall be based only upon the facts presented to the Examiner. A copy of the notice shall be sent to the appellant and parties of record.

(5) — Staff Report. At least fourteen days prior to the date of the scheduled hearing, the Administrative Official shall file a staff report concerning the appeal with the Board, and provide a copy to the appellant and other parties of record.

(6) — Memoranda from Appellant and other Parties of Record. Any party of record may submit a written argument or memorandum of authority at least fourteen days prior to the date of the scheduled hearing before the Board of County Commissioners. Such invited written argument or memorandum of authorities shall be filed with the Board with copies to the Planning Division and the other parties. No written argument or authorities may be thereafter submitted. Memoranda, written argument or comments shall not include the presentation of any new evidence and shall be based only on the facts presented to the Examiner. The memoranda are limited to stating why the record does or does not support the decision of the Hearing Examiner.

(7) — Oral Argument. Oral argument shall be confined to the issues raised in the hearing record, appeal statement, the Hearing Examiner's decision, staff report, and memoranda of authorities timely filed by the deadlines set for briefing. Oral argument shall be limited to stating why the record does or does not support the decision of the Hearing Examiner. Time allowed for oral argument shall be appropriately limited by the Board.

(8) — Decision by the Board. The Board shall deliberate on the matter in public at the advertised public hearing to reach its decision. The decision on the appeal shall be made on the appeal statement, written memoranda of authorities, staff report and any documents comprising the record that formed the basis for the administrative appeal. No additional evidence or testimony shall be given or received except for oral argument as allowed in Subsection 16B.09.055(7) above. A written decision will be made within thirty days of the close of the deliberation and vote on the appeal.

(9) — Failure to Comply. Written memoranda of authorities, if invited, must be received by the Clerk of the Board by mail or personal delivery before the close of business on the due date. Late submittals received after the deadline or uninvited memoranda shall not be accepted or distributed for consideration no matter when such submittals were mailed or postmarked.

#### **16B.09.060 Judicial Appeals.**

(1) — A final determination by the County (which includes final administrative appeals and decisions) on an application may be appealed by a party of record with standing to file a land use petition in Superior Court. Such petition must be filed within twenty-one days of issuance of the Board's decision, as provided in Chapter 36.70C RCW.

(2) — This process shall be the exclusive means of judicial review, except for local land use decisions reviewable by a quasi-judicial body created by state law, such as the Shorelines Hearings Board or the Growth Management Hearings Board.

#### **16B.09.070 Appeals Standards and Criteria.**

The appeal body or Reviewing Official Hearing Examiner shall issue a decision to grant, grant with modifications, or deny the appeal in accordance with YCC 16B.08.050 for open record appeals, YCC 16B.09.050 for closed record appeals and this Section for all types of appeals. The appeal body or Reviewing Official Hearing Examiner shall accord substantial weight to the decision of the applicable Administrative Official and the SEPA Responsible Official.



- | (1) If the ~~appeal body or Reviewing Official~~ Hearing Examiner determines that the challenged decision is supported by substantial evidence in the record and is a correct application of the law, then the decision shall be upheld.
- | (2) If the ~~appeal body or Reviewing Official~~ Hearing Examiner determines that the challenged decision is not supported by substantial evidence, then the decision shall be reversed or remanded.
- | (3) If the ~~appeal body or Reviewing Official~~ Hearing Examiner determines that the challenged decision is an incorrect application of the law, then the decision shall be reversed or remanded.

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