



GENERAL APPLICATION FORM

For Land Use Actions

Yakima County Public Services

128 North Second Street · Fourth Floor Courthouse · Yakima, Washington 98901
(509) 574-2300 · 1-800 572-7354 · FAX (509) 574-2301 · www.co.yakima.wa.us

Public Services (3)

FINAL

Revised 10/01/15

APR 21 2017

Norm 989 Gary Don Lynn
Harold Lisa Carmen

(Staff Use Only)

Zoning District: MIN Date: 4/21/2017
 Receipt #: RECDW75244 Reviewed By: JHL
 Proposed Land Use: Appeal Project #: PRJ2017-00216
 Case #(s): APL2017-00003

CHECK ALL THAT APPLY AND ATTACH THE APPROPRIATE SUPPLEMENTAL FORM(S)

- | | | | | | |
|--|---|--|---|--|--|
| Zoning | | Subdivision | | Shoreline | |
| <input type="checkbox"/> Type 1 | <input type="checkbox"/> Admin. Adjustment | <input type="checkbox"/> Exemption (SSE) | <input type="checkbox"/> Shoreline Substantial Dev. | <input type="checkbox"/> Shoreline Conditional Use | |
| <input type="checkbox"/> Type 2 | <input type="checkbox"/> Variance | <input type="checkbox"/> Short Subdivision | <input type="checkbox"/> Shoreline Variance | <input type="checkbox"/> Shoreline Exemption | |
| <input type="checkbox"/> Type 3 | <input type="checkbox"/> Modification | <input type="checkbox"/> Subdivision (Long) | <input type="checkbox"/> Shoreline Non-Conforming | <input type="checkbox"/> Shoreline Minor Revision | |
| <input type="checkbox"/> Type 4 | <input type="checkbox"/> Non-Conforming Use | <input type="checkbox"/> Binding Site Plan | | | |
| <input type="checkbox"/> Reduce Resource Setback | <input type="checkbox"/> Interpretation | <input type="checkbox"/> Alteration/Vacation | | | |
| <input type="checkbox"/> Accessory Dwelling Unit | <input type="checkbox"/> Dairy | <input type="checkbox"/> *Amendment | | | |
| <input type="checkbox"/> Minor Rezone | <input type="checkbox"/> Mining | <input type="checkbox"/> Sub Variance | | | |
| <input type="checkbox"/> Major Rezone | | | | | |
| | | | Critical Areas | | |
| | | | <input type="checkbox"/> CA Standard Development | | |
| | | | <input type="checkbox"/> CA Adjustment | | |
| | | | <input type="checkbox"/> CA Reasonable Use Except. | | |
| | | | <input type="checkbox"/> CA Minor Revision | | |
| | | | <input type="checkbox"/> CA Non-Conforming Use | | |
- Other**
- Environmental Checklist Plan/Dev. Reg. Map Ad.
 Appeal - HE BOCC Plan/Dev. Reg. Text Ad.
 Development Agreement

Parcel Number(s): A. 191306-24004 B. and others referenced C. in CUP2015-00037
and SEP2015-00016

Subject Property Address: _____

Are you requesting the Optional Consolidated Permit Review Process as provided under YCC 16B.03.060? Yes No

* In accordance with YCC16B.04.020(2)(a) please submit verification with your Short Subdivision Amendment or Subdivision Amendment that the majority of those persons having an ownership interest in the lots, tracts, parcels, or portion thereof to be revised or altered has signed the proposed application.

Applicant Information: (Please check the box to indicate the primary contact person)

By signing this form, I hereby state as true that all ownership interests of the property have reviewed the proposal as presented in the application materials and support the proposed change(s) in land use and hereby give Yakima County permission to enter my property during the course of this review to inspect my property as needed. Additionally, I hereby agree to pay all additional fees associated with the processing of this application including Hearing Examiner Fees, Transportation Fees or any other fees that may be associated with the proposed project.

(If the property is owned by a corporation or LLC please attach documentation showing that the person signing has the authority to sign on behalf of the corporation or LLC.) Please Fill Out In Blue or Black Ink and Original Signatures only.

Property Owner: _____
 Day Phone: () _____ Company (if any) _____
 Mailing Address: _____ City: _____ State: _____ ZIP: _____
 E-mail Address: _____
 Signature: _____ Date: _____

Applicant/Agent (if different): Confederated Tribes and Bands of the Yakima Nation
 Day Phone: (509) 865-7268 Company (if any) _____
 Mailing Address: P.O. Box 150, 401 Fort Road City: Toppenish State: WA ZIP: 98948
 E-mail Address: ethan@yakimanation-dc.org
 Signature: [Signature] Date: 4/21/17

If there are additional owners, provide an attachment in the same format and with the same declarations



NARRATIVE FORM

FINAL
Revised 10/01/15

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The Narrative Form is designed to help you, the application review, interested agencies, and adjacent property owners to the proposal understand the scope of your project and how your project meets the legal requirements in the Yakima County Codes. You should refer to the appropriate sections of the ordinance when describing your proposal if applicable. You can obtain a copy of the ordinance in our office or access it on the internet at:

<http://codepublishing.com/wa/yakimacounty/>

Narrative Content: Please tell us the “who”, “what”, “where”, and “why” of your proposal. A list of typical content is provided below. **Please do not limit your project’s description to just these items.** In order for us to conduct a timely review of your project please **be as detailed as possible.** Any missing/confusing information could result in the delay of our review.

Note: Not all content listed below will be pertinent to your proposal. These items are suggestions in order to help you draft your narrative.

Suggested Content:

- Describe the current use of the site including all existing structures with their dimensions, square footage and usage.
- Describe the proposed use in detail (including but not limited to the type of business and/or use, hours and days of operation, number of employees, number of people living on-site, maximum number of customers and/or guests, changes or additions to the driveways or other access points, the type of mitigation or adjustment requested).
- Describe which standards are proposed to be adjusted and justify why the standard needs to be adjusted.
- Describe any new or existing structures to be used as part of this proposal.
- Describe how the proposed use will be pertinent to the proposed/existing structures.
- Describe any parking facilities (number of spaces and surface type), landscaping, signage, and lighting that will be associated with your proposal.
- Describe your access to the property and the route of travel to the site.
- For commercial operations describe the travel ways that will be located onsite.
- Describe the timelines for completion of your proposal.

Please remember that your narrative must explain in detail the specifics of your proposal and any missing information may result in the need for future reviews. Your narrative can be typed and printed on a separate sheet of paper with “See Attached” written below, you may print out legibly your narrative on the lines provided.

See attached.

Public Services

APR 21 2007

Vern _____ Lynn _____
Harold _____ Lisa _____ Carmen _____



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

Public Services (w)

April 21, 2017

APR 21 2017

Sent via Hand Delivery and Electronic Mail

Vern ___ Gary ___ Don ___ Lynn ___
Harold ___ Lisa ___ Carmen ___

Lynn Deitrick, AICP – SEPA Responsible Official
Planning Services Division
Yakima County Public Services
128 North Second Street
Yakima, WA 98901

Re: NOTICE OF ADMINISTRATIVE APPEAL OF ROWLEY QUARRY EXPANSION (PRJ2014-00021/CUP2015-00037/SEP2015-00016)

Dear Ms. Deitrick:

We write on behalf of the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) to administratively appeal Yakima County’s Final Decision (PRJ2014-00021/CUP2015-00037/SEP2015-00016) (hereafter the “Final Decision”), which approves Granite Northwest, Inc.’s (“Granite”) application for a conditional use permit to expand its gravel mining operation within a Yakama burial ground, recorded archaeological site, and recorded cemetery (hereafter the “Burial Ground”). In support of the Yakama Nation’s administrative appeal, and in accordance with Section 16B.09.010(2) of the Yakima County Code, the Yakama Nation states as follows:

A. Appellant’s Name, Address, and Phone Number.

Confederated Tribes and Bands of the Yakama Nation
P.O. Box 151, 401 Fort Road
Toppenish, WA 98948
(509) 865-5121

B. Appellant’s Statement Establishing Standing to Initiate this Appeal under Section 16B.09.020 of the Yakima County Code.

The Yakama Nation has standing to initiate this appeal because it is a Party of Record, is aggrieved by Yakima County’s Final Decision, and will suffer direct and substantial impacts as a result of Yakima County’s Final Decision. Under Section 16B.09.020 of the Yakima County Code, a party has standing to initiate an appeal if they are a Party of Record aggrieved by the final decision and will suffer direct and

Public Services (a)



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substantial impacts from approval or denial of the project.¹ The term 'Parties of Record' is defined to include affected tribes.²

Here, the Yakama Nation is a Party of Record because it is an affected Tribe, and is aggrieved by Yakima County's Final Decision because Yakima County failed to meet its legal obligations under the Treaty of 1855, Washington State land use laws, and environmental laws to the detriment of the Yakama Nation's rights and interests in the preservation and protection of its ancestors and cultural resources. The Yakama Nation faces a direct and substantial impact from Yakima County's approval of Granite's mine expansion proposal because any expansion of mining operations within the Burial Ground threatens desecration, if not outright destruction of the Yakama Nation's ancestors and cultural resources. Because the Yakama Nation is a Party of Record aggrieved and facing a direct and substantial impact as a result of Yakima County's Final Decision, the Yakama Nation satisfies the requirements of Section 16B.09.020 and has standing to bring this administrative appeal.

C. An Identification of the Specific Proposals and Specific Answers, Omissions, Conditions, or Determinations for which Appeal is Sought.

The Yakama Nation is aggrieved by the following elements of Yakima County's Final Decision:

1. Yakima County's approval of Granite's application for a conditional use permit authorizing Granite to expand its gravel mining operation within the Burial Ground (PRJ2014-00021/CUP2015-00037/SEP2015-00016).³

2. Yakima County's statement that its conditions for Granite's conditional use permit "must be obtained within three year [sic] of the date of this decision"⁴

3. Yakima County's reliance on the mitigation measures detailed in its Final Mitigated Determination of Non-Significance (hereafter "Final MDNS") (SEP2015-00016).⁵

4. Yakima County's implicit assertion that it performed a technically sufficient "environmental review under file number SEP2015-00016."⁶

¹ YCC § 16B.09.020(1)(c) (2016).

² YCC § 16B.09.020(2)(d).

³ YAKIMA COUNTY PLANNING DIVISION, PRJ2014-000216/CUP2015-00037/SEP2015-00016, MINING SITE/OPERATION EXPANSION FINAL DECISION, 1, 21 (April 7, 2017) (hereafter cited as "FINAL DECISION").

⁴ FINAL DECISION at 1.

⁵ FINAL DECISION at 2.

⁶ FINAL DECISION at 6.



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5. Yakima County's Staff Finding that "[t]hrough the SEPA review, it was determined that a Determination of Significance (which would trigger preparing an Environmental Impact Statement (EIS)) was not needed for this project, based on a review of the information provided by the applicants in the environmental checklist and from comments from agencies, adjoining property owner's, [sic] and interested parties during the application review."⁷

6. Yakima County's implicit assertion that a *technically sufficient* cultural resources survey of the Burial Ground was provided to the Department of Archaeology and Historic Preservation ("DAHP") and the Yakama Nation.⁸

7. Yakima County's Staff Finding that the mitigation measures detailed in Yakima County's Final MDNS (SEP2015-00016) "mitigate any impact to potential cultural resources."⁹ Final Decision at 13-14.

8. Yakima County's Staff Finding that there are "potential cultural resources . . ." as opposed to actual and known cultural resources and human remains within the Burial Ground.¹⁰

9. Yakima County's Staff Finding that "the mitigation measures outlined in SEP2015-00016 are sufficient to protect the cultural resources on site."¹¹

10. Yakima County's Staff Finding that "A Mitigated Determination of Non-Significance has been issued for this proposal requiring mitigation for . . . cultural resources."¹²

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.

The Yakama Nation administratively appeals Yakima County's unlawful Final Decision under Chapter 16B.09 of the Yakima County Code to protect its ancestors' remains, talus pit burials, and cultural resources located within the Burial Ground from further desecration or destruction by Granite's mining operations. Specifically, Yakima County's Final Decision violates the Yakama Nation's inherent sovereign rights reserved in the Treaty of 1855, the State Environmental Policy Act (RCW Chapter 43.21C), the Land Use Petition Act (RCW Chapter 36.70C), RCW Chapter 27.53 concerning archaeological sites and

⁷ FINAL DECISION at 10.

⁸ FINAL DECISION at 13, 14.

⁹ FINAL DECISION at 13, 14.

¹⁰ FINAL DECISION at 14.

¹¹ FINAL DECISION at 14.

¹² FINAL DECISION at 18.



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resources, RCW Chapter 27.44 concerning Indian graves and records, and RCW Chapter 68.60 concerning abandoned and historic cemeteries and historic graves.

1. Treaty of 1855: In the Treaty of 1855, the Yakama Nation reserved all rights not expressly ceded to the United States therein, including the right to preserve and protect its ancestors and cultural resources wherever they are located.¹³ Yakima County's Final Decision violates the Yakama Nation's Treaty-reserved rights because it directly impacts the Yakama Nation's ability to preserve and protect its ancestors and cultural resources without the Yakama Nation's free, prior, and informed consent.¹⁴
2. State Environmental Policy Act: Yakima County's Final Decision and, as incorporated by reference, Final MDNS are clearly erroneous under the State Environmental Policy Act ("SEPA") because:
 - a. Yakima County failed to determine whether Granite's proposed mine expansion will have a significant impact on the environment;¹⁵
 - b. Yakima County did not rely on sufficient information when making its threshold determination as demonstrated by its failure to seek formal technical comments from the Yakama Nation or DAHP,¹⁶ failure to consider a technically sufficient cultural resources survey, failure to consider the effects of Granite's detonations related to significant seismic events on the Burial Ground, and by virtue of its own implicit admission that it lacked sufficient information to issue its threshold determination;¹⁷
 - c. Washington State Supreme Court precedent supports issuing a determination of significance under SEPA where cultural resources will be impacted by a proposed project;¹⁸

¹³ Treaty with the Yakamas of 1855, Yakama Nation-U.S., June 9, 1855, 12 Stat. 951; *U.S. v. Winans*, 198 U.S. 371, 381, 25 S. Ct. 662, 49 L. Ed. 1089 (1905) (stating "[i]n other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them – a reservation of those not granted.").

¹⁴ Treaty with the Yakamas of 1855, *supra* note 13; see also United Nations Declaration on the Rights of Indigenous Peoples, art. 32, par. 2, U.N. Doc. A/61/L.67 (Sept. 13, 2007) (requiring States to "consult and cooperate in good faith with the indigenous peoples . . . in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.").

¹⁵ RCW § 43.21C.030(2)(c).

¹⁶ RCW § 43.21C.030(2)(d).

¹⁷ WAC § 197-11-335; *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176 (2000); *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 423 (Div. III 2010), (citing RCW § 43.21C.030(2)(c)).

¹⁸ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619 (1993).



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- d. Yakima County failed to withdraw its MDNS despite receiving significant new information concerning both the Burial Ground and Granite's lack of material disclosure about its active mining operations and proposed mine expansion;¹⁹ and
- e. Yakima County's mitigation measures for cultural resources are insufficient, unreasonable, and impossible to perform.²⁰
3. Land Use Petition Act: Yakima County's Final Decision violates the Land Use Petition Act because Yakima County failed to follow a prescribed process, and Yakima County's Final Decision represents an erroneous interpretation of the law, is not supported by substantial evidence, is a clearly erroneous application of the law to the facts, is outside Yakima County's authority, and violates the Yakama Nation's Treaty-reserved rights which the Supremacy Clause of the United States Constitution deems the supreme law of the land.²¹
4. RCW Chapter 27.53 Concerning Archaeological Sites and Resources: Yakima County's Final Decision authorizing up to three years of active mining operations within a recorded archaeological site and cemetery without Granite first obtaining an Archaeological Excavation and Removal Permit from DAHP – not to mention Yakima County's maintenance of a permit for Granite's current mining operation without an Archaeological Excavation and Removal Permit – violates RCW Chapter 27.53 and its implementing regulations in WAC Chapter 25-48, which require an Archaeological Excavation and Removal Permit prior to any excavation of historic or prehistoric archaeological resources.²²
5. RCW Chapter 27.44 Concerning Indian Graves and Records: Given the Yakama Nation's repeated notifications to Yakima County through its policy leaders and technical staff that there are human burials that will be impacted by Granite's proposed mine expansion, Yakima County's Final Decision represents the knowing removal, mutilation, defacement, injury, or destruction of the Yakama Nation's ancestors' remains and talus pit burials in violation of RCW 27.44.040.²³

¹⁹ WAC § 197-11-340(3).

²⁰ RCW § 43.21C.060; WAC § 197-11-660(1)(c)

²¹ RCW § 36.70C.130(1); U.S. Const. art. VI, para. 2.

²² RCW § 27.53.060(1); WAC § 25-48-041(1).

²³ RCW § 27.44.040(1); *see also* RCW § 27.44.050 (authorizing Indian tribes to bring civil suits for damages of \$500 per enrolled member or actual damages, whichever is greater, for violations of RCW § 27.44.040).



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6. RCW Chapter 68.60 Concerning Abandoned and Historic Cemeteries and Graves: Yakima County's Final Decision authorizes Granite to willfully destroy, mutilate, or injure the Yakama Nation's ancestors' remains and talus pit burials within a dedicated Historical cemetery in violation of RCW Chapter 68.60.²⁴

E. The Desired Outcome or Relief Sought by the Appellant.

The Yakama Nation respectfully requests that the Yakima County Hearings Examiner:

1. Reverse Yakima County's Final Decision (PRJ2014-00021/CUP2015-00037/SEP2015-00016) to grant a conditional use permit to Granite Northwest, Inc.;
2. Reverse Yakima County's Final Mitigated Determination of Non-Significance related to Yakima County's Final Decision (PRJ2014-00021/CUP2015-00037/SEP2015-00016) to grant a conditional use permit to Granite Northwest, Inc.;
3. Remand Granite Northwest, Inc.'s conditional use permit application and SEPA Checklist back to the Yakima County Planning Department to enter a determination of significance necessitating an environmental impact statement; and
4. Grant any other relief that the Hearings Examiner deems just and proper.

F. Additional Information for SEPA Appeals.

The Yakama Nation objects to Yakima County's threshold determination that Granite's expansion of mining operations within the Burial Ground will not significantly impact the environment—defined to include cultural resources—if mitigated in accordance with Yakima County's Final Mitigated Determination of Non-Significance. Yakima County's April 7th Notice of Decision provides that "Appeals of the SEPA threshold determination can be made to Superior Court within 21 days of this decision." This creates a procedural aberration because SEPA appeals to Superior Court are generally required to be brought along with a challenge to the underlying land use decision, which in this case is still undergoing administrative appeal.

²⁴ RCW § 68.60.040.



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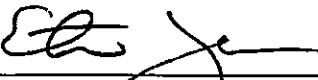
Vern ___ Gary ___ Don ___ Lynn ___
Harold ___ Lisa ___ Carmen ___

The Yakama Nation will file a protective SEPA challenge against Yakima County in Superior Court in accordance with Yakima County's Notice of Decision, and expressly preserves all SEPA claims and defenses with the filing of this Notice of Administrative Appeal.

Respectfully,



JOE SEXTON, WSBA NO. 38063
GALANDA BROADMAN, PLLC
P.O. BOX 15146
SEATTLE, WA 98115
TELEPHONE: (509) 910-8842
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M. PATRICE KENT, WSBA NO. 42460
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ATTORNEYS FOR THE CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA NATION



APPEAL FORM

APR 21 2017

FINAL Revised 10/1/15

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INSTRUCTIONS TO APPELLANT:

An appeal of a decision or certain conditions required in a decision can be filed by the applicant or aggrieved party (example: neighbor or agency) **within fourteen calendar days following the issuance of the decision or determination**. The hearing body for the appeal is determined by the level of review for the original permit as outline in YCC 16B.03.030 Table 3-1 and as follows:

Type 1: Review is heard by the Hearing Examiner

Type 2: Review is heard by the Hearing Examiner

Type 3: Review is heard by the Yakima County Board of County Commissioners

Type 4: Review is heard by Superior Court and ***is not*** filed with the Planning Division.

SEPA: (as required under YCC 16B.06.070) associated with a Type 1 & 2 permit is heard by Superior Court. Those associated with a Type 3 permit is heard by the Hearing Examiner. An appeal of the Hearing Examiner's determination goes directly to Superior Court.

The appeal must be submitted to the Public Services Department: Planning Division either by mail or personal delivery before close of business on the last day of the appeal period.

The appellant shall bear the burden of proving the decision was made in error and must include the following information as part of the appeal application at the time it is submitted to the Planning Division:

- The required filing fee **must** accompany the application.
- Attachments, as required below, must be typed or legibly written and submitted along with the application.
- Required Information as outlined in YCC 16B.09.010(2):
 - Appellant's name, address, and phone number;
 - Appellant's statement establishing standing to initiate the appeal under Section 16B.09.020 of this chapter;
 - An identification of the specific proposal and specific actions, omissions, conditions or determinations for which appeal is sought;
 - 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
 - The desired outcome or relief sought by the appellant.
 - SEPA appeals shall additionally contain the information required by YCC 16B.06.070(4)

The appellant (applicant) or a representative must be present at the public hearing. The hearing is scheduled at the next available hearing date. Notice of the hearing must be provided as required by County Code. Approximately ten days prior to the hearing, a staff report regarding the appeal is available. A copy is provided to the appellant and applicant, if different.

ADDITIONAL INFORMATION AND SPECIAL INSTRUCTIONS FOR CLOSED RECORD **APP 9-12017**

APPEALS:

Vern ___ Gary ___ Don ___ Lyn ___
Harold ___ Lisa ___ Carmen ___

- Notice is provided to parties of record only.
- Appeals to the Hearing Examiner are open record hearings. The record includes all materials received in evidence at any previous stage of the review, such as: audio or video tapes of the prior hearing, the Hearing Examiner's determination or recommendation, and arguments by the parties at the Examiner's hearing.
- Appeals to the BOCC are limited to the record presented before the Hearing Examiner. However, the Board of County Commissioners may allow supplementation of the record upon a showing of good cause.
- Closed Record appeals shall follow all the procedures as outlined in YCC 16B.09.055.



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Please answer the following questions. Please attach additional sheets if needed:

File Number of Permit Being Appealed: PRJ2014-00021 / CUP2015-00037 / SEP2015-00016

1. Please describe below how you have standing as required under YCC 16B.09.020:

See attached.

2. Please describe the specific proposal and specific actions, omissions, conditions or determination for which the appeal is sought:

See attached.

3. Please explain the particular grounds for the appeal, the principal points of the appeal and why you believe the decision to be wrong:

See attached.

4. What is the desired outcome or relief sought:

See attached.

The appellant may submit any additional information that they feel will support their argument.

OPEN RECORD APPEALS:

1) Are you requesting a Prehearing Conference as described in YCC 16B.09.045 (4)?
 Yes No

If no, the appellant must comply with all the requirements as outlined under YCC 16B.09.045

CLOSED RECORD APPEALS:

If this is a closed record appeal (as outlined in YCC 16B.09.050) to the Yakima County Board of County Commissioners the appellant shall follow all of the required procedures as outlined in YCC 16B.09.055.

Public Services (4)

APR 21 2017

Vern Gary Don Lynn
Harold Lisa Carmen