

**Y SCHOOL DISTRICT / APPLE VALLEY  
ELEMENTARY  
APP#008-21  
(MOD#021-21, APP#001-21)**

## EXHIBIT LIST

## CHAPTER D

### Applications

[illegible]



## LAND USE APPLICATION

JUL 14 2021

CITY OF YAKIMA, DEPARTMENT OF COMMUNITY DEVELOPMENT  
129 NORTH SECOND STREET, 2ND FLOOR, YAKIMA, WA 98901☒ REC'D  
☐ PAID☐ FAXED  
☐ FYI

PHONE: (509) 575-6183 EMAIL: ask.planning@yakimawa.gov

**INSTRUCTIONS – PLEASE READ FIRST** Please type or print your answers clearly.

Answer all questions completely. If you have any questions about this form or the application process, please ask a Planner. Remember to bring all necessary attachments and the required filing fee when the application is submitted. The Planning Division cannot accept an application unless it is complete and the filing fee paid. Filing fees are not refundable. This application consists of three parts. PART I - GENERAL INFORMATION AND PART III - CERTIFICATION are on this page. PART II contains additional information specific to your appeal and MUST be attached to this page to complete the application.

**PART I – GENERAL INFORMATION**

## 1. Appellant's Information:

Name: Dr. Peter Finch

Mailing Address: 8902 Zier Road

City: Yakima

St: WA

Zip: 98908

Phone: (509) 972-6007

E-Mail: finchp@wvwd208.org

\*\*\*Any additional appellant parties may be listed on a separate page\*\*\*

2. Site Address of the Proposal Being Appealed: 7 N. 88th Ave., Yakima, WA

**PART II – SUPPLEMENTAL APPLICATION (SEE ATTACHED SHEET)****PART III – CERTIFICATION**

3. I certify that the information on this application and the required attachments are true and correct to the best of my knowledge.

Appellant's Signature

July 14, 2021

Date

FILE/APPLICATION(S)#:

APP# 001-21

DATE FEE PAID:

7-14-21

RECEIVED BY:

Jose A

AMOUNT PAID:

\$580.00

RECEIPT NO:

CR-21-002133

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# D-1



Supplemental Application For:

## APPEAL

Yakima Urban Area Zoning Ordinance Chapter 15.16/Chapter 16.08

### PART II – SUPPLEMENTAL APPLICATION

#### 1. THIS APPLICATION IS AN APPEAL OF:

☒ Administrative Official's Decision

☐ Hearing Examiner's Decision

☐ Subdivision Administrator's Decision

☐ SEPA Determination

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☐ Other: \_\_\_\_\_

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#### 2. FILE NUMBER(S) OF PROPOSAL BEING APPEALED: MOD#021-21

#### 3. DESCRIPTION OF ACTION BEING APPEALED:

The School District challenges the Administrative Official's June 30, 2021 decision in MOD#021-21 to deny the School District's Modification Application, which requested approval of as-built elevations that are an increase over the elevations the City of Yakima approved as part of the School District's building permit for replacement of Apple Valley Elementary School.

See attached for more detailed explanation.

#### 4. REASON FOR APPEAL - Describe the specific error(s) or issues(s) upon which the appeal is based, including an explanation of why the decision is not consistent with the Yakima Urban Area Plan, The Yakima Urban Area Zoning Ordinance, or other provisions of law. (Reference the section, paragraph, and page of the provision(s) cited.) (Attach if lengthy):

See attached.

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# 0-1

THE HONORABLE GARY CUILLIER

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CITY OF YAKIMA  
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**BEFORE THE HEARING EXAMINER OF THE CITY OF YAKIMA**

In the matter of the Appeals of:

WEST VALLEY SCHOOL DISTRICT  
NO. 208, a political subdivision of the  
State of Washington,

Appellant,

v.

CITY OF YAKIMA, a political  
subdivision of the State of Washington,

Respondent.

MOD#21-021

NOTICE OF ADMINISTRATIVE APPEAL

West Valley School District No. 208 (the "School District") for its Notice of Administrative Appeal to the City of Yakima Hearing Examiner for review of the Administrative Official's Decision upon consideration of an Application for Modification from the School District, states and alleges as follows:

1. The subject Modification Application proposed to add a 5-foot walking path around the perimeter of the playfields, to change the backstop and goal locations, to reduce the amount of asphalt in the playground, to approve the as-built increased site elevations, and to install site-screening in certain locations. On June 30, 2021, the City issued its decision on the School District's Request for Modification. Decision at 1. The City

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 approved the walking path, revised backstop and goalpost locations, the reduction of asphalt  
2 for the playground, and the installation of site screening. Decision at 1. However, the City  
3 denied the School District's request to approve the as-built grading on the basis that the as-  
4 built site grading shown in the modification application is in "excess of a 50% increase in  
5 elevation from what was shown with the B200126 submittal in several locations, not  
6 meeting the standard for a modification." Decision at 1. Additionally, the City found that  
7 the increase in site grading "does create an adverse impact" because "the City received  
8 numerous phone calls and emails from adjacent property owners" about "its negative impact  
9 on adjacent property owners." Decision at 6.

16 2. Appellant West Valley School District No. 208 ("School District") is a  
17 public-school district operating in Yakima, Washington. Appellant's business address is  
18 8902 Zier Road, Yakima, Washington 98909.

21 3. Attorneys for the Appellant are Kristine R. Wilson and Julie Wilson-  
22 McNerney, Perkins Coie, 1201 Third Avenue, Seattle, Washington 98101-3099.

25 4. Attached to this Notice of Administrative Appeal as Exhibit A is the  
26 appealed-from decision of the Administrative Official ("Decision"), dated June 30, 2021 and  
27 as Exhibit B, a statement from the applicant in accordance with Yakima Municipal Code  
28 ("YMC") 16.08.018.C.

32 5. Appellant has standing to initiate this appeal as a party of record per YMC  
33 16.08.018.A. Appellant in this matter is the applicant whose modification request was  
34 denied by the City of Yakima ("City").

37 6. Appellant is appealing the Decision on the grounds that the Administrative  
38 Official exceeded her authority in issuing the Decision; the Administrative Official  
39 committed an error of law; and the findings, conclusions or decision prepared by the  
40 Administrative Official are not supported by substantial evidence in the following respects:

44 a. As described in the accompanying Memorandum of Points and Authorities in  
45 Support of Notice of Administrative Appeal, the Administrative Official committed an error  
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DOC.  
INDEX# B-1Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 of law by finding that the as-built elevations did not meet the criteria for a modification  
2 because the elevations were in excess of a 50% increase in elevation from the building  
3 permit submittal. MOD#021-21 at 5. In arriving at this determination, the City applied  
4 YMC 15.17.020.C's criterion that "any expansion of use area or structure will not exceed  
5 fifty percent of the gross floor area." *Id.* The City incorrectly applied the law in finding that  
6 the as-built site grading is not consistent with the standards for a modification under Chapter  
7 YMC 15.17.  
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12 b. As described in the accompanying Memorandum of Points and Authorities in  
13 Support of Notice of Administrative Appeal, the Administrative Official's finding that the  
14 as-built grading would be more than a 50% increase in elevation (MOD#021-21 at 5) is not  
15 supported by substantial evidence. Assuming *arguendo*, that the 50% threshold in YMC  
16 15.17.020.C applicable to gross floor area increases applies to elevation changes, the City's  
17 record does not support the finding that the grading changes exceed the 50% threshold.  
18 Instead, the City's record demonstrates that the average increase in grade is only 32% across  
19 the entire site from the permit set to the as-built conditions.  
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26 c. As described in the accompanying Memorandum of Points and Authorities in  
27 Support of Notice of Administrative Appeal, the Administrative Official's finding that the  
28 as-built grading would cause an adverse effect is not supported by substantial evidence. The  
29 City's record consistently demonstrates that the site grading would not have an adverse  
30 effect and that the grading met code requirements. For the City to approve a modification  
31 request, the "proposed change in the site design or arrangement" must not "in the  
32 determination of the planning division . . . create or materially increase any adverse impacts  
33 or undesirable effects of the project." YMC 15.17.040.B.1.c. The City found that the  
34 increase in elevation "does create an adverse impact of the project" because the "new grade  
35 is significantly higher in elevation than what was previously shown" on the approved  
36 grading plans. MOD#021-21 at 6. The City cites to "concerns" raised by adjoining property  
37 owners about "its negative impact on adjacent property owners." Decision at 6. These  
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# D-1Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 concerns and negative impacts are unidentified in the decision. The City's record shows that  
2 grading would not have adverse effects based on the environmental review, the City's  
3 surface water engineer's analysis that the site does not create any erosion or drainage  
4 impacts, and the School District's agreement to mitigate aesthetic and visual impacts by  
5 installing view-obscuring material on fencing on the east and south sides of the school.  
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8  
9 d. As described in the accompanying Memorandum of Points and Authorities in  
10 Support of Notice of Administrative Appeal, the Administrative Official exceeded her  
11 authority in applying a higher standard to the denial of the grading modification than would  
12 have been applied to the initial grading permit review.  
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15  
16 e. As described in the accompanying Memorandum of Points and Authorities in  
17 Support of Notice of Administrative Appeal, the Administrative Official exceeded her  
18 authority in requiring the school district to regrade the site because the requirement is  
19 contrary to the nexus and proportionality test. The City found that the increase in site  
20 grading "does create an adverse impact" because "the City received numerous phone calls  
21 and emails from adjacent property owners" about "its negative impact on adjacent property  
22 owners." MOD#021-21 at 6. Because the as-built grading was deemed to be a 50%  
23 increase over the elevations the City had previously approved and because the grading  
24 creates an adverse impact, the City denied the School District's grading request and required  
25 the School District to "regrade the site consistent with grading contours as shown in the  
26 building plan submittal (B200126)." MOD#021-21 at 7. Even if there were adverse  
27 impacts from the as-built elevation, the imposition of a requirement to regrade the site is  
28 contrary to the nexus and proportionality test. The City may only impose requirements that  
29 are proportionate to the impacts of the proposed action. No substantial evidence has been  
30 provided to demonstrate the nexus or proportionality between probable impacts of the  
31 proposed action and the requirement that the School District regrade the site. Therefore, the  
32 Administrative Official's lacks the authority to require the school district to regrade the site.  
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45 7. Appellant seeks the following relief from the Hearing Examiner:  
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# D-1Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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CITY OF YAKIMA  
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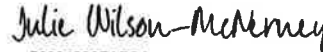
1 a. For an Order reversing the Modification Decision and granting the School  
2 District's Modification Application with respect to grading.  
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4 b. For permission to amend this Notice of Administrative Appeal based upon  
5 the record;  
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7 c. For such other and further relief as the Hearing Examiner deems just and  
8 equitable.  
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14  
15 DATED: July 14, 2021  
16

DocuSigned by:



56831288FAFC4EA

17 Kristine R. Wilson, WSBA No. 33152  
18 Julie A. Wilson-McNerney, WSBA No. 46585  
19 **Perkins Coie LLP**  
20 1201 Third Avenue  
21 Seattle, WA 98101-3099  
22 Phone: 206.359.8000  
23 Fax: 206.359.9000  
24 JWilsonMcNerney@perkinscoie.com  
25

26 *Attorneys for Appellants West Valley School*  
27 *District No. 208*  
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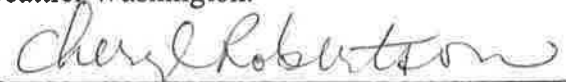
**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing **NOTICE OF ADMINISTRATIVE APPEAL** to be served on the following persons via the methods indicated below:

City of Yakima  
Community Development Department  
129 N. 2nd Street, 2nd Floor  
Yakima, WA 98901

- ☐ Via U.S. Mail, 1st class, postage prepaid
- ☒ Via Legal Messenger
- ☐ Via Facsimile
- ☐ Via Overnight Mail
- ☐ Via email

DATED this 14th day of July, 2021 at Seattle, Washington.



Cheryl Robertson, Legal Practice  
Assistant

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NOTICE OF ADMINISTRATIVE APPEAL – 6

Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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# EXHIBIT A

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# D-1



DEPARTMENT OF COMMUNITY DEVELOPMENT  
Joan Davenport, AICP, Director

Planning Division  
Joseph Calhoun, Manager  
129 North Second Street, 2<sup>nd</sup> Floor, Yakima, WA 98901  
ask.planning@yakimawa.gov · www.yakimawa.gov/services/planning

## CITY OF YAKIMA

### FINDINGS of FACT, CONCLUSIONS, & DECISION for REQUEST FOR MODIFICATION File Number: MOD#021-21

<b>APPLICANT:</b>	West Valley School District c/o Angela Von Essen
<b>APPLICANT ADDRESS:</b>	8902 Zier Rd., Yakima, WA 98908
<b>PROPERTY OWNER:</b>	West Valley School District #208
<b>PROPERTY OWNER ADDRESS:</b>	8902 Zier Rd., Yakima, WA 98908
<b>PROJECT LOCATION:</b>	7 N. 88th Ave.
<b>TAX PARCEL NUMBER:</b>	181319-42006 &-42022
<b>DATE OF REQUEST:</b>	May 28, 2021
<b>DATE OF DECISION:</b>	June 30, 2021
<b>STAFF CONTACT:</b>	Eric Crowell, Associate Planner

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#### I. DESCRIPTION OF REQUEST:

Modification to the final site plan of CL3#010-19 to add a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, regrading of the site, and installation of sitescreening in some locations, at the site of a new elementary school in the R-1 zoning district.

#### II. SUMMARY OF DECISION: The Modification request for the five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, reduction in asphalt for the playground, and installation of site screening are approved. The Modification request for re-grading of the site is denied.

#### III. FACTS:

##### A. Processing

1. The application for a Modification was received on May 28, 2021.
2. Additional drawings and an updated narrative were received on June 21, 2021.
3. An additional drawing showing added sitescreening was received on June 23, 2021.
4. The application was deemed complete for processing on June 30, 2021.
5. This application is being processed under the provisions of Ch. 15.17 (Modifications to Existing or Approved Uses or Development).

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2015  
1994

**B. Applicable Law:**

**1. Yakima Urban Area Zoning Ordinance:**

- a. Modification of (Use or Development) Defined: Pursuant to YMC § 15.02.020, "Modification (of use or development)" means any change or alteration in the occupancy, arrangement, placement or construction of any existing use, structure, or associated site improvement, and any change or alteration of land.
- b. Use Defined: Pursuant to YMC § 15.02.020, "Use" means the activity or purpose for which land or structures or a combination of land and structures is designed, arranged, occupied, or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself, including any grading, leveling, paving or excavation. "Use" also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.
- c. Submittals: Pursuant to YMC § 15.17.040 (A), applications for modification shall follow the submittal requirements for Type (1) review. In addition, for an approved Class (2) or (3) use or development, the applicant shall submit both the site plan previously approved by the reviewing official and a new site plan showing the location, size, and type of modification proposed by the applicant.
- d. Limits of Expansion Under Modification: Pursuant to YMC § 15.17.020, minor changes to existing or approved Class (1), (2) or (3) uses or development may qualify for abbreviated review under the provisions in this chapter, if they meet the criteria listed below. Overlay districts shall not increase the level of review for the provisions of this chapter. Modifications not meeting the criteria below must apply directly for review as a Class (1), (2) or (3) use or development.
  - i. The modification will not increase residential density that would require an additional level of review;
  - ii. The modification will not increase the amount of parking by more than ten percent or twenty spaces (whichever is least), except that the amount of parking for controlled atmosphere and cold storage warehouses may be increased by up to twenty spaces. This limit shall be calculated cumulatively for all previous modifications since the last normal review;
  - iii. Any expansion of use area or structure will not exceed fifty percent of the gross floor area. The expansion of an existing single-family home may exceed the fifty percent limit when all applicable setback and lot coverage standards are met. This limit shall be calculated cumulatively for all previous modifications since the last normal review;
  - iv. The modification will not increase the height of any structure;
  - v. This limit shall be calculated cumulatively for all previous modifications since the last normal review;

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- vi. The modification will not add a drive-thru facility; and
  - vii. The modification does not include hazardous materials.
- e. Review: Pursuant to YMC § 15.17.040 (B), applications for modifications may be administratively and summarily reviewed using the Type (1) review process, in addition to the following criteria:
- i. Any proposed change in the site design or arrangement:
    - Will not change or modify any special condition previously imposed under Class (2) or (3) review;
    - Will not adversely reduce the amount of existing landscaping or the amount or location or required sitescreening; and
    - In the determination of the Planning Division, it will not create or materially increase any adverse impacts or undesirable effects of the project.
  - ii. All proposed new structures, site improvements, or structural alterations to existing structures or site improvements comply with the development standards of YMC Ch. 15.05 through 15.08, except as approved under the adjustment or variance provisions.
- f. Sitescreening—Purpose: Pursuant to YMC 15.07.010, the purpose of this chapter is to: establish sitescreening standards to provide a visual buffer between uses of different intensity, streets and structures; reduce erosion and stormwater runoff; protect property values; and eliminate potential land use conflicts by mitigating adverse impacts from dust, odor, litter, noise, glare, lights, signs, water runoff, buildings or parking areas.

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**IV. FINDINGS:** The Administrative Official makes the following findings:

- A. The subject property is classified as Elementary and Middle School, a Class (3) permitted use in the R-1 zoning district (YMC § 15.04, Table 4-1, Permitted Land Uses). The project was originally approved under CL3#010-19.
- B. Regarding soil and terrain, the Environmental Checklist (SEPA#038-19) noted that "approximately 15,000 cubic yards of grading and excavation would occur during project construction. The site is anticipated to be a net balance and no significant amounts of imported or exported soils are anticipated."
- C. Status of Environmental Work – the following summary was provided by the Department of Ecology:
  - 1. It has been estimated that there are approximately 58,000 acres of lead and arsenic impacted soil in Yakima County alone and 187,588 acres impacted state wide. One of the strategies widely used in Washington State and acceptable to both Ecology and Yakima Regional Clean Air Authority (YRCAA) is capping of lead and arsenic containing soils with hardscape (asphalt or concrete) or some combination of fabric, clean soil, and mulches like bark or rock.

2. In 2012 as part of an Ecology funded project and consistent with an Ecology accepted practice, the lead and arsenic containing soil in the grass-surfaced areas at the Apple Valley Elementary site was covered by fabric and about eight inches of clean soil before grass was re-established. Areas of lead and arsenic containing soil located under buildings, parking lots and sidewalks were not disturbed during the 2012 project.
3. The 2019/2020 Apple Valley Elementary project included demolition of existing buildings and regrading of the site to facilitate the new elementary school building construction and associated stormwater management. As the new construction would disturb lead and arsenic containing soils previously capped by the 2012 Ecology lead project, the District's environmental consultant, Fulcrum Environmental Consulting, Inc. (Fulcrum), notified both the Ecology and the YRCAA that work would occur on the Apple Valley Elementary School site and reviewed the intended mitigation plan for regrading and re-capping the site with fabric and clean soil or hardscape consistent with Ecology's 2012 mitigation work.
4. Both worker and community protection measure were developed as a portion of the soil mitigation plan and was incorporated into the project specifications for the contractors to follow during construction. Contractor dust control and stormwater measures during lead and arsenic soil moving tasks has been monitored by Fulcrum and have been within the pre-project identified tolerances.
5. Construction on the Apple Valley Elementary project is nearing completion. Following is a summary of current conditions:
  - a. One stockpile of lead and arsenic soil remains onsite and is being used to finish the elevation of soil located beneath the fabric cap. Some surplus soil from this stockpile maybe removed from the site. The stockpile has been characterized and was below the dangerous waste threshold.
  - b. All lead and arsenic contaminated soil was removed from stormwater infiltration areas.
  - c. Lead and arsenic contaminated soil remaining in building footprint, asphalt parking, or concrete side walk areas have been capped with gravel and either concrete or asphalt.
  - d. Lead and arsenic contaminated soil remaining grass or landscaping areas is currently being covered with an orange geotextile fabric and clean soil.
  - e. Following clean soil placement, either sod will be added to the grass surfaced areas.
- D. This modification is being requested in order to add a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, modified site grading, and installation of sitescreening in some locations.

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E. Modification to Permitted Development and Uses Regulated. Pursuant to YMC § 15.17.020, the proposal complies with the following criteria in order to be considered a modification:

1. The modification will not increase residential density that would require an additional level of review.

Staff Response: *Not applicable; it is not a residential use.*

2. The modification will not increase the amount of parking by more than ten percent or twenty spaces (whichever is least), except that the amount of parking for controlled atmosphere and cold storage warehouses may be increased by up to twenty spaces. This limit shall be calculated cumulatively for all previous modifications since the last normal review.

Staff Response: *No additional parking is being proposed.*

3. Any expansion of use area or structure will not exceed fifty percent of the gross floor area. The expansion of an existing single-family home may exceed the fifty percent limit when all applicable setback and lot coverage standards are met. This limit shall be calculated cumulatively for all previous modifications since the last normal review.

Staff Response: *The school building and grounds are not being expanded from what was previously approved, as all proposed site modifications are within the Apple Valley school parcels. The number of playfields is being increased from two to three, an increase of 50 percent, meeting the standard for modification.*

*The addition of the five-foot paved path around a portion of the perimeter and the reduction in playground asphalt will result in a cumulative decrease of 6 percent for overall impervious lot coverage, meeting the standard for a modification.*

*Grading is included in the definition of "Use" and is therefore subject to review under the Modification criteria. On-site grading has changed significantly from the grading contours submitted with the Building Permit (B200126). The new contour lines shown on the revised Modification Site Plan and narrative submitted with this application are in excess of a 50% increase in elevation from what was shown with the B200126 submittal in several locations, not meeting the standard for a modification.*

4. The modification will not increase the height of any structure.

Staff Response: *The school was approved for a variance (VAR#004-19) to exceed the 35-foot height limitation in the R-1 zoning district, but no other structures are proposed that exceed the approved 44-foot height.*

5. This limit shall be calculated cumulatively for all previous modifications since the last normal review.

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Staff Response: Previous modifications (MOD#026-18, MOD#031-18) were for the placement of portable classrooms, which were eliminated with the construction of the new school.

6. The modification will not add a drive-thru facility.

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Staff Response: No drive-thru facility is being added.

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7. The modification does not include hazardous materials.

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Staff Response: The proposed modification does not introduce additional soil containing hazardous materials. See analysis provided above for on-site conditions related to soil remediation and capping under the Department of Ecology Guidelines.

- F. The proposed modification complies with all other development standards of the R-1 zoning district.
- G. The proposal will not change or modify any special condition previously imposed under the previous land use review by the Hearing Examiner in 2020.
- H. The proposal will not significantly reduce the amount of the existing landscaping. It will not reduce the amount or location of the existing required sitescreening. While an Administrative Adjustment (ADJ#027-19) was approved, waiving the requirement that view-obscuring material be added to the existing chain link fence, the applicant has agreed to add view-obscuring material to a portion of the fence along the east and south property lines.
- I. The proposed asphalt path, additional field, relocated backstop, and additional sitescreening will not create or materially increase any adverse impacts of the project.
- J. The proposed increase in site grading elevation does create an adverse impact of the project. The new grade is significantly higher in elevation than what was previously shown on the grading plans submitted with B200126. The City received numerous phone calls and emails from adjacent property owners which prompted the Building Official to issue a stop-work order. The WVSD held a neighborhood meeting on June 14, 2021 to hear the concerns and questions of neighbors. Multiple emails and phone calls were received by various City staff both prior and subsequent to the meeting about site grading and its negative impact on adjacent property owners.
- K. **Development Service Team Review:** A Development Service Team (DST) meeting was not held for technical review of the project. The following comment was received from Randy Meloy, Surface Water Engineer:
1. *Per your request I went out to Apple Valley Elementary and walked around the entirety of the path to assess the possibility of drainage impacts. The asphalt path is about five feet wide and is located close to the school's fence along the perimeter of their parcel. The cross slope of the path is generally flat, with some areas gently sloped towards the grass and other areas gently sloped towards the*



*fence. It is my opinion that there would be no drainage impact on the surrounding parcels due to this paved path being close to the fence. The only possible scenario where I could see there being any kind of drainage issue would be on the south side if the school overwatered with the sprinklers, and because the main grassy area is elevated, you could get runoff from the sloped grassy areas making its way towards the perimeter. If that happened there is still a ten foot separation between the school's fence and the neighbor's fences. Much of the runoff would infiltrate into the ground in this area. This is assuming there would be some problem with the school irrigation and that is unlikely. Along the east side of the school there is a small gravel berm between the path and the fence which would help to contain any runoff that might get there. Again, I would not anticipate any issues there.*

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*Last night and this morning there was a decent amount of rainfall at the school, and while walking the path I looked for signs of erosion and did not find any. This path is only five feet wide and it is my opinion that it will not cause any drainage problems.*

**V. CONCLUSIONS:**

- A.** The Administrative Official has reviewed the addition of a five-foot-wide walking path around the perimeter of the playfield, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, and installation of sitescreening in some locations against the standards and requirements for a Modification under YMC Ch. 15.17 and has concluded that they are consistent with said standards and requirements.
- B.** The proposed site grading is not consistent with the standards and requirements for a Modification under YMC Ch. 15.17.
- C.** All other development standards of the R-1 zoning district will be met.
- D.** The revised site plans submitted on June 21 and 23, 2021 shall serve as the final site plans for items approved under this Modification.

**VI. DECISION:**

The Administrative Official hereby determines that the requested Modification application (MOD#021-21) to add a five-foot-wide walking path, increase the number of fields from two to three, revised backstop and goalpost locations, a slight reduction in asphalt for the playground, and installation of additional fencing to an existing Class (3) use is **approved**, and authorizes the issuance of the permit(s) based upon the above findings and conclusions and subject to the Building Official's determination of compliance with all building codes.

The Administrative Official hereby determines that the requested Modification application (MOD#021-21) for site grading is **denied**, and requires the applicant to regrade the site consistent with grading contours as shown in the building plan submittal (B200126).

Entered this **30th day of June, 2021**, pursuant to the authority granted under YMC Ch. 15.17. This decision constitutes the final zoning review and is hereby granted and forwarded to the Building Official.

West Valley School District / Apple Valley Elementary  
MOD#021-21

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This zoning decision is valid for one year from this date unless appealed under the Yakima Municipal Code. The zoning decision may be extended one time up to one additional year prior to the expiration date, as set forth in YMC § 15.12.060. This zoning decision is not a construction permit and does not in and of itself authorize any use to be established, constructed, made or implemented without a construction permit issued by the Building Official and the conditions pending have been completed. This zoning decision shall expire if: a) a construction permit and/or business license for the approved project is required but not issued within one year from the date of issuance of this final decision; b) the construction permit and/or business license is issued but allowed to expire; or c) the project is modified and a new zoning decision is issued.

***The issuance of any permit, subsequent permit inspection, land use decisions, or other related applications by the City of Yakima shall not be construed as an approval for work to be performed in violation of any government (Federal, State or Local) order to cease or limit construction activities during the COVID-19 emergency period outlined in such order.***

  
Joan Davenport, AICP, Community Development Director

#### **APPEAL**

Pursuant to YMC 15.17.040 and 15.17.050, uses or developments denied under this chapter may submit applications for review under the normal review provisions for the use. Decisions by the planning division regarding approval or denial of administrative modifications may be appealed as prescribed by the applicable review. All appeals shall be filed within fourteen days following the mailing of the final decision by the Administrative Official or designee. Appeals must be submitted in writing to the City of Yakima, Community Development Department; 129 N. 2nd St., Yakima, WA 98901. If a final decision does not require mailing, the appeal shall be filed within fourteen days following the issuance of the final decision.

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# EXHIBIT B

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THE HONORABLE GARY CULLIER

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CITY OF YAKIMA  
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**BEFORE THE HEARING EXAMINER OF THE CITY OF YAKIMA**

In the matter of the Appeals of:

WEST VALLEY SCHOOL DISTRICT  
NO. 208, a political subdivision of the  
State of Washington,

Appellant,

v.

CITY OF YAKIMA, a political  
subdivision of the State of Washington,

Respondent.

MOD#021-21

DECLARATION OF DR. PETER FINCH

I, Dr. Peter Finch, declare and state as follows:

1. I am over the age of eighteen years, make this declaration on personal knowledge of the facts stated herein, and am competent to testify.

2. I am currently the Acting Superintendent of Schools for the West Valley School District. I have served as an Assistant Superintendent at the West Valley School District since 2001.

3. I have read the appeal of the City of Yakima's partial denial of MOD#021-21 and believe the contents to be true.

DECLARATION OF DR. PETER FINCH – 1

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# D-1

Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 I declare that the foregoing is true and correct to the best of my knowledge and  
2  
3 subject to the penalty of perjury under the laws of the state of Washington.  
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7 Dated this 14th day of July, 2021, at Yakima, Washington.  
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Dr. Peter Finch, Acting Superintendent

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DECLARATION OF DR. PETER FINCH - 2

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Perkins Cole LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

CERTIFICATE OF SERVICE


I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing

**DECLARATION OF DR. PETER FINCH** to be served on the following persons via the methods indicated below:

City of Yakima  
Community Development Department  
129 N. 2nd Street, 2nd Floor  
Yakima, WA 98901

- ☐ Via U.S. Mail, 1st class, postage prepaid  
☒ Via Legal Messenger  
☐ Via Facsimile  
☐ Via Overnight Mail  
☐ Via email

DATED this 14th day of July, 2021 at Seattle, Washington.

  
Cheryl Robertson, Legal Practice  
Assistant

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

THE HONORABLE GARY CUILLIER

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CITY OF YAKIMA  
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**BEFORE THE HEARING EXAMINER OF THE CITY OF YAKIMA**

In the matter of the Appeals of:

WEST VALLEY SCHOOL DISTRICT  
NO. 208, a political subdivision of the  
State of Washington,

Appellant,

v.

CITY OF YAKIMA, a political  
subdivision of the State of Washington,

Respondent.

MOD#021-21

APPELLANT'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF ADMINISTRATIVE  
APPEAL

West Valley School District No. 208 (the "School District") submits the following Memorandum of Points and Authorities in support of its above-captioned Administrative Appeal to the City of Yakima Hearing Examiner. The School District challenges the Administrative Official's June 30, 2021 decision, MOD#021-21, ("Decision") to deny the School District's Modification Application, which requested approval of as-built elevations for the replacement of Apple Valley Elementary School that are a 32% increase over the elevations the City of Yakima ("City") approved as part of the School District's building permit. The Decision is clearly erroneous, inconsistent with applicable law, not supported

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 by substantial evidence, and exceeded the City's authority. The City erred in applying a  
2 modification standard pertaining to gross floor area to an elevation change to find that the  
3 School District's request did not meet the criteria for a modification. Furthermore, the  
4 City's findings that the elevation changes constitute a more than 50% increase over the  
5 previously approved plans and that the grading change would cause an adverse effect to  
6 adjacent property owners are not supported by substantial evidence. The Decision requires  
7 the School District to regrade the site consistent with the grading depicted on the previously  
8 approved site plans—an expensive endeavor that will delay the opening of the playfields in  
9 time for students' arrival in the 2021-2022 school year and that is not proportionate to the  
10 alleged adverse impacts associated with the increased elevation. The City exceeded its  
11 authority in requiring the School District to regrade the site. The School District urges the  
12 Hearing Examiner to reverse the City's Decision denying the modification approval for the  
13 as-built grading and to approve said modification.

#### 24 I. EVIDENCE RELIED UPON

25 In support of its appeal, the District relies upon all the documents filed with the City  
26 of Yakima in the record for File No. MOD#021-21 and the Declaration of Dr. Peter Finch  
27 filed herewith.

#### 28 II. RELIEF REQUESTED

29 Consistent with YMC 16.08.018.G, the School District requests that the City's  
30 Decision be reversed and that the School District's Modification Application be approved  
31 because the Decision is clearly erroneous, inconsistent with applicable law, not supported by  
32 substantial evidence, and exceeded the City's authority.

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000



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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT**III. STANDARD OF REVIEW**

The Hearing Examiner reviews appeals of an Administrative Official's decision *de novo*. YMC 16.08.020.A. The Hearing Examiner may "affirm or reverse, wholly or in part, or modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal was taken." YMC 16.08.018.G. To carry its burden of proof, the Appellant must demonstrate at least one of the following:

1. The decision-maker . . . exceeded his or her jurisdiction or authority;
2. The decision-maker failed to follow applicable procedures in reaching the decision;
3. The decision-maker committed an error of law; and/or
4. The findings, conclusions or decision prepared by the decision-maker are not supported by substantial evidence.

YMC 16.08.014.

**IV. FACTUAL BACKGROUND****The Project**

In February 2019, voters in the School District's boundaries approved a \$59 million bond to replace Apple Valley and Summitview Elementary Schools to provide more capacity to reduce overcrowding. Declaration of Dr. Peter Finch, filed on July 14, 2021 (hereinafter "Finch Decl."), ¶ 3. On October 23, 2019, the School District submitted a Class 3 Review application (CL3#010-19, VAR#004-19, ADJ#027-19, and CAO#027-19) to the City to completely replace the Apple Valley School District on the same site.<sup>1</sup> *Id.* at ¶

<sup>1</sup> The permitting and SEPA process for the school replacement project was completed in two phases. In 2019, the City conducted an environmental review under the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA") for the demolition of the existing school building and issued a Mitigated Determination of Non-Significance, which included mitigation measures related to removing contaminated building materials, conducting work under the Model Toxics Control Act to

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1 8, Ex. A at 3. The School District proposed the construction of a new 60,000-square-foot  
2 elementary school building in the R-1 zoning district with 147 parking spaces, a playground,  
3 and two playfields. *Id.* The application included requests for a variance to exceed the  
4 building height limitation in this zoning district; a critical areas review due to the site being  
5 in a wellhead protection area; and an administrative adjustment to waive the site-screening  
6 requirement that would impose a 6-foot view-obscuring fence, installation of a digital sign  
7 and wall signs that are not otherwise allowed in residential zoning districts, and to adjust the  
8 maximum height for signs set back more than 15 feet from the right-of-way. *Id.* at 3-4. The  
9 City completed SEPA review for the school construction and issued a Determination of  
10 Non-Significance on January 22, 2020. *Id.* at 4. The SEPA checklist submitted for the  
11 project did not identify any environmental impacts associated with site grading. *Id.* at ¶ 10,  
12 Ex. C at Attachment 1. The Hearing Examiner approved this application with conditions on  
13 February 28, 2020. *Id.* at ¶ 8, Ex. A at 23-25.

26  
27 **A. The Permits and Permit Process**

28 On April 7, 2020, the City approved Building Permit B200126 and the associated  
29 plan set, which included an overall grading plan for the entire site. Finch Decl., ¶ 4. The  
30 2020 approved grading plan included proposed elevations for the southeastern corner of the  
31 site that ranged from 1266 feet above sea level (ASL) near the southern fenceline to 1276  
32 feet ASL at the playfield at the northeastern corner of the site. Finch Decl., ¶ 11, Ex. D.  
33 Throughout the course of the project, the School District worked with the Washington State  
34 Department of Ecology on contamination issues at the site and to implement a clean cap  
35 over contaminated soil that would be protective of human health and the environment.

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46 address contamination on the site prior to development, and compliance with Yakima Regional  
47 Clean Air Agency requirements. Finch Decl., ¶ 9, Ex. B at 6.

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 Decision at 3-4. When construction at the site was completed, the finished elevations at the  
2 site ranged from 1266 feet ASL near the southeastern fenceline to 1276 feet ASL at the  
3 northeastern corner of the site, but certain portions of the southern playfield were graded at  
4 an elevation 1 to 3 feet higher than approved by the City in 2020. Finch Decl., ¶¶ 11-12,  
5 Exs. D-E. However, the finished elevation in other areas of the site is 1 foot lower than  
6 shown in the approved plans. *Id.*

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12 In late May 2021, the School District submitted a Modification Application to the  
13 City in accordance with Chapter YMC 15.17 to add a 5-foot walking path around the  
14 perimeter of the playfields, to change the backstop and goal locations, to reduce the amount  
15 of asphalt in the playground, to approve the as-built increased site elevations, and to install  
16 site-screening in certain locations. Decision at 1. The City would not deem the School  
17 District's application complete until the School District held a public meeting to obtain  
18 public comment on June 14, 2021. Finch Decl., ¶ 6. At the public meeting, neighbors  
19 expressed concerns about the height of the southern playfield and concerns that people using  
20 the playfields would be able to see in their backyards. Finch Decl., ¶ 7. In response to  
21 public comments, the School District included as part of its Modification Application the  
22 installation of view-obscuring material to a portion of the fencing along the east and  
23 southern property lines adjacent to the neighboring residences. Decision at 6.

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37 **B. The Land Use Decision**

38 On June 30, 2021, the City issued its decision on the School District's Request for  
39 Modification. Decision at 1. The City approved the walking path, revised backstop and  
40 goalpost locations, the reduction of asphalt for the playground, and the installation of site  
41 screening. Decision at 1. However, the City denied the School District's request to approve  
42 the as-built grading on the basis that the final site grading shown in the modification

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 application is in "excess of a 50% increase in elevation from what was shown with the  
2 B200126 submittal in several locations, not meeting the standard for a modification."  
3  
4 Decision at 1. Additionally, the City found that the increase in site grading "does create an  
5 adverse impact" because "the City received numerous phone calls and emails from adjacent  
6 property owners" about "its negative impact on adjacent property owners." Decision at 6.  
7  
8 The Decision does not specify the concerns upon which the City determined that the as-built  
9 grading would cause an adverse impact.  
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14 The City's surface water engineer conducted a site visit at Apple Valley Elementary  
15 School while the City reviewed the Modification Application, after the final grading was in  
16 place, and following a period of rain. Decision at 7. The surface water engineer noted no  
17 signs of erosion. Decision at 7. The City's engineer also concluded that there would be no  
18 drainage impact on the surrounding properties from the paved path. *Id.* Indeed, the  
19 engineer noted that the  
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26 only possible scenario I could see there being any kind of  
27 drainage issue would be on the south side if the school  
28 overwatered with the sprinklers, and because the main grassy  
29 area is elevated, you could get runoff from the sloped grassy  
30 areas making its way to the perimeter. If that happened there  
31 is still a ten foot separation between the school's fence and the  
32 neighbor's fences. Much of the runoff would infiltrate into the  
33 ground in this area. This is assuming there would be some  
34 problem with the school irrigation and that is unlikely. Along  
35 the east side of the school there is a small gravel berm  
36 between the path and the fence which would help to contain  
37 any runoff that might get there. Again, I would not anticipate  
38 any issues there.  
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41 Despite the engineer's analysis, the City denied the School District's grading request and  
42 required the School District to "regrade the site consistent with grading contours as shown in  
43 the building plan submittal (B200126)." Decision at 7.  
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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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CITY OF YAKIMA  
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## V. LEGAL ARGUMENT

## A. The Administrative Official Committed an Error of Law in Partially Denying the Modification Application

The Administrative Official committed an error of law by finding that the as-built elevations did not meet the criteria for a modification because the elevations were in excess of a 50% increase in elevation from the building permit submittal. Decision at 5. In arriving at this determination, the City applied YMC 15.17.020.C's criterion that "any expansion of use area or structure will not exceed fifty percent of the gross floor area." *Id.* Finished grading elevations are not expansions based on gross floor area. The City incorrectly applied the law in finding that the site grading is not consistent with the standards for a modification under Chapter YMC 15.17.

Under the City's process for modification applications, "minor changes to existing or approved Class (1), (2) or (3) uses or development may qualify for abbreviated review" under Chapter 15.17 YMC. YMC 15.17.020. A change may be approved through a modification if, among other things,

C. Any expansion of use area or structure will not exceed fifty percent of the gross floor area. The expansion of an existing single-family home may exceed the fifty percent limit when all applicable setback and lot coverage standards are met. This limit shall be calculated cumulatively for all previous modifications since the last normal review[.]

YMC 15.17.020. YMC 15.02.020 defines "use" to include "the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself, including any grading, leveling, paving or excavation." Although grading is covered in the definition of a "use" under the code, YMC 15.17.020 focuses on "an expansion of use area" and whether that expansion exceeds 50% of the gross floor area.

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 In applying YMC 15.17.020.C to deny the grading modification, the City committed  
2 an error of law in two respects. First, the City concluded that an increase in finished  
3 elevation is an "expansion of use area." The Decision clearly states that the "school  
4 building and grounds are not being expanded from what was previously approved, as all  
5 proposed site modifications are within the Apple Valley school parcels." Decision at 5. A  
6 minor change in grading elevation does not constitute an expansion of the grading area. The  
7 area re-graded as part of the project did not change and therefore was not expanded.  
8  
9 Second, even if an increase in elevation falls within an "expansion of use area," such an  
10 expansion is limited to no more than 50% of the gross floor area. Per YMC 15.02.020 and  
11 15.06.040.A,  
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21 "gross floor area" means the total square footage of all floors  
22 in a structure as measured from the interior surface of each  
23 exterior wall of the structure and including halls, lobbies,  
24 enclosed porches and fully enclosed recreation areas and  
25 balconies, but excluding stairways, elevator shafts, attic space,  
26 mechanical rooms, restrooms, uncovered steps and fire  
27 escapes, private garages, carports and off-street parking and  
28 loading spaces. Storage areas are included in gross floor area.  
29  
30

31 Grading elevations do not fall within the definition of gross floor area. Yet, in denying the  
32 grading modification, the City applied the 50% threshold in YMC 15.17.020.C to an  
33 increase in grading elevation, and as discussed in more detail below, miscalculated the  
34 increase in grading elevation. Furthermore, the City's Decision does not calculate total  
35 square footage of all floors in the structures at the elementary school and compare that  
36 square footage to the increase in elevation. Instead, the City reviewed the "new contour  
37 lines" submitted with the Modification Application and incorrectly concluded that those new  
38 contours "are in excess of a 50% increase in elevation from what was shown with the  
39 B200126 submittal in several locations, not meeting the standard for a modification."  
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Perkins Cole LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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1 Decision at 5. The City committed an error of law in concluding that a modification was not  
2 available to approve the as-built elevations by applying a percentage increase threshold  
3 applicable to gross floor area to an elevation change.  
4  
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6  
7 **B. The Findings of Fact Are Not Supported by Substantial Evidence<sup>2</sup>**  
8

9 The Administrative Official's Decision must be supported by substantial evidence  
10 that the modification request meets the standards and requirements for approving a  
11 modification and by substantial evidence that demonstrates nexus and proportionality  
12 between clearly identified adverse impacts and the decision made. *See* YMC 16.08.014;  
13 YMC 15.17.040, YMC 15.17.020; *Honesty in Envtl. Analysis and Legislation (HEAL) v.*  
14 *Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 534, 979 P.2d 864  
15 (1999). "Substantial evidence" is evidence of a "sufficient quantity to persuade a reasonable  
16 person that the declared premise is true." *Isla Verde Int'l Holdings v. City of Camas*, 146  
17 Wn.2d 740, 751-52, 49 P.3d 867 (2002). As demonstrated below, the record does not  
18 support a finding that grading elevations are 50% higher than the approved plans. Further,  
19 the City's environmental documents, the SEPA Checklist and the DNS, do not identify  
20 grading-related impacts to adjacent properties.  
21  
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25 **1. The finding that the as-built grading would be more than a 50% increase in elevation is not supported by substantial evidence.**  
26

27 Assuming *arguendo*, that the 50% threshold in YMC 15.17.020.C applicable to gross  
28 floor area increases applies to elevation changes, the City's record does not support the  
29 finding that the grading changes exceed the 50% threshold. Instead, the City's record  
30 demonstrates that the average increase in grade is only 32% across the entire site from the  
31 permit set to the as-built conditions. The grading plan approved by the City in 2020  
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<sup>2</sup> Because the City has not yet produced the administrative record in this proceeding, the School District wishes to reserve opportunity to supplement this Memorandum prior to the hearing.

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1 included proposed final elevations at the edges of the site that are exactly the same as the as-  
2 built elevations. Finch Decl., ¶¶ 11-12, Exs. D-E. Portions of the southern playfield were  
3 graded at an elevation 1 to 3 feet higher than approved by the City in 2020. *Id.* However,  
4 the finished elevation in other areas of the site is 1 foot lower than shown in the approved  
5 plans. *Id.* Taking into account that some areas of the site have a lower elevation than  
6 originally proposed, the changes in grading across the site constitute a 32% increase in  
7 elevation; not the 50% the City found. The City's finding that the grading elevations had  
8 increased by more than 50% is not supported by substantial evidence in the record.

16  
17 **2. The finding that the as-built grading would cause an adverse**  
18 **effect is not supported by substantial evidence.**

19 The City's record consistently demonstrates that the site grading would not have an  
20 adverse effect and that the grading met code requirements. For the City to approve a  
21 modification request, the "proposed change in the site design or arrangement" must not "in  
22 the determination of the planning division . . . create or materially increase any adverse  
23 impacts or undesirable effects of the project." YMC 15.17.040.B.1.c. The City found that  
24 the increase in elevation "does create an adverse impact of the project" because the "new  
25 grade is significantly higher in elevation than what was previously shown" on the approved  
26 grading plans. Decision at 6. The City cites to "concerns" raised by adjoining property  
27 owners about "its negative impact on adjacent property owners." Decision at 6. These  
28 concerns and negative impacts are unidentified in the decision. The neighbors raised  
29 concerns over aesthetic and visual impacts associated with the increased site grading during  
30 public meetings. Finch Decl. ¶ 7. The City Code does not include a specific requirement  
31 that impacts to aesthetics and visual quality be assessed when analyzing impacts associated  
32 with a modification application. Instead, the City Code incorporates the 2018 Washington  
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MEMORANDUM OF POINTS AND  
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Perkins Cole LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000



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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

1 Building Code, which addresses what constitutes an adverse impact to adjacent properties  
2 from grading. YMC 11.04.010, 11.04.J103.2. Sections J108.3 and J109.4 of the 2018  
3 Washington Building Code indicate that revised grading can harm adjacent properties if the  
4 revised grading changes drainage patterns or by causes unstable slopes. Here, the City's  
5 own engineer determined that the as-built conditions at the school would not cause erosion  
6 or drainage problems. Decision at 6-7. There is no substantial evidence in the record to  
7 support an adverse effect finding in this case.

8  
9 Neither of the City's SEPA approvals for the Apple Valley Elementary School  
10 project identify any impacts associated with grading. Neither does the SEPA checklist for  
11 the school construction, which indicates that 15,000 cubic yards of grading and excavation  
12 would occur and that "the site is anticipated to be a net balance and no significant amounts  
13 of imported or exported soils are expected." Finch Decl. ¶ 8, Ex. A, Attach. 1 at 6. No  
14 significant aesthetic impacts were identified in the SEPA checklist for prepared for school  
15 construction. Finch Decl. ¶ 8, Ex. A, Attach. 1. To the contrary, the analysis concluded that  
16 "views of the site would generally remain similar to the existing conditions and would be  
17 reflective of the existing school uses on the site." Finch Decl. ¶ 8, Ex. A, Attach. 1 at 20. A  
18 minor increase of 1 to 3 feet in elevation does not change this analysis. The City's finding  
19 that the increased elevation would create an adverse impact is not supported by substantial  
20 evidence.<sup>3</sup>

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<sup>3</sup> Furthermore, the City cannot do indirectly what it cannot do directly. The Administrative Official exceeded her authority in applying a higher standard to the denial of the grading modification than would have been applied to the initial grading permit review. Reading YMC 15.17.040.B.1.c's provision allowing denial of a modification upon the finding of any new negative impact to aesthetics or visual quality, as the City has done here, is an expansive reading of the City's authority. Because the site design or arrangement changes that are reviewed in the modification application process will by their nature involve visual changes, it cannot be the case that any visual changes disliked by the community is sufficient reason to deny a modification application. A modification application for grading cannot be held to a higher standard of review than the initial

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1201 Third Avenue  
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CITY OF YAKIMA  
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**C. The City Exceeded Its Authority in Requiring the School District to Regrade the Site**

Even if there were adverse impacts from the as-built elevation, the imposition of a requirement to regrade the site is contrary to the nexus and proportionality test. The City may only impose requirements that are proportionate to the impacts of the proposed action. No substantial evidence has been provided to demonstrate the nexus or proportionality between probable impacts of the proposed action and the requirement that the School District regrade the site. "The rough proportionality requirement limits the extent of the mitigation measures, including denial, to those which are roughly proportional to the impact they are designed to mitigate." *HEAL*, 96 Wn. App. at 534. In this case, to require the School District to regrade the entire site when the School District is close to applying for a final Certificate of Occupancy would not meet the proportionality test.

To impose a requirement that the School District regrade the site, the City must comply with state limitations on project regulations and exactions found under the Washington State Constitution. *See Isla Verde Int'l Holdings*, 146 Wn.2d at 759 (mitigation for all land use regulatory exactions must be reasonably necessary as a direct result of the proposed development); *HEAL*, 96 Wn. App. at 534 (rough proportionality requirements limit local governments to imposing mitigation measures that are roughly proportionate to the impact they are trying to mitigate). The City has failed to so comply. As described above in Sections V.B.1 and V.B.2, the City's Decision completely fails to identify the adverse impacts that would require the School District to regrade the site. The School

grading review. No significant adverse environmental effects were identified in the SEPA review, and the 2018 Washington State Building Code does not identify visual changes as an adverse impact to adjacent properties. Yet, the City denied the School District's modification application on the basis that it would create a new visual impact, and in doing so exceeded its authority. This is not the standard under SEPA, nor the 2018 Washington State Building Code. *See* RCW 43.21C.060; Sections J108.3 and J109.4 of the 2018 Washington Building Code.

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Fax: 206.359.9000

District should not be asked to regrade the site to an elevation that is 1 to 3 feet less in certain places to address speculative concerns from neighboring property owners over aesthetic and visual quality issues. Such a requirement is not proportionate to the alleged impact created by the increased elevation. As demonstrated in the record, the School District has addressed the neighbors' concerns by agreeing to install opaque fencing along the south and eastern edges of the playfields to mitigate any aesthetic and visual quality issues. Decision at 6. The City lacks authority to require the School District to regrade the site.

#### VI. CONCLUSION

The City's denial of the grading modification is based on errors of law and fact. The Hearing Examiner should reverse the City's Decision and approve the as-built site elevations for Apple Valley Elementary School.

DATED: July 14, 2021

DocuSigned by:

*Julie Wilson-McNerney*

56831288FAEC4EA

Kristine R. Wilson, WSBA No. 33152  
Julie A. Wilson-McNerney, WSBA No. 46585  
**Perkins Coie LLP**  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000  
JWilsonMcNerney@perkinscoie.com

*Attorneys for Appellants West Valley School  
District No. 208*

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**CERTIFICATE OF SERVICE**

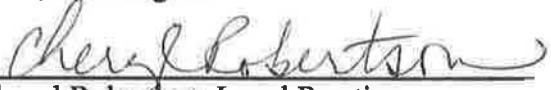
I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF ADMINISTRATIVE APPEAL** to be served on the following persons via the methods indicated below:

City of Yakima  
Community Development Department  
129 N. 2nd Street, 2nd Floor  
Yakima, WA 98901

- ☐ Via U.S. Mail, 1st class, postage prepaid  
☒ Via Legal Messenger  
☐ Via Facsimile  
☐ Via Overnight Mail  
☐ Via email

DATED this 14th day of July, 2021 at Seattle, Washington.

  
Cheryl Robertson, Legal Practice  
Assistant

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THE HONORABLE GARY CUILLIER

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CITY OF YAKIMA  
COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER OF THE CITY OF YAKIMA**

In the matter of the Appeals of:

WEST VALLEY SCHOOL DISTRICT  
NO. 208, a political subdivision of the  
State of Washington,

Appellant,

v.

CITY OF YAKIMA, a political  
subdivision of the State of Washington,

Respondent.

MOD#021-21

DECLARATION OF DR. PETER FINCH  
IN SUPPORT OF MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF NOTICE OF  
ADMINISTRATIVE APPEAL

I, Dr. Peter Finch, declare and state as follows:

1. I am over the age of eighteen years, make this declaration on personal  
knowledge of the facts stated herein, and am competent to testify.

2. I am currently the Acting Superintendent of Schools for the West Valley  
School District. I have served as an Assistant Superintendent at the West Valley School  
District since 2001.

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DECLARATION OF DR. PETER FINCH  
ISO MEMORANDUM OF POINTS AND  
AUTHORITIES ISO NOTICE OF  
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**Perkins Coie LLP**  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

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CITY OF YAKIMA  
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3. In February 2019, voters in the School District's boundaries approved a \$59 million bond to replace Apple Valley and Summitview Elementary Schools to provide more capacity to reduce overcrowding.

4. On April 7, 2020, the City approved Building Permit B200126 and the associated plan set, which included an overall grading plan for the entire site.

5. In May 2021, the School District submitted a Modification Application to the City to add a 5-foot walking path around the perimeter of the playfields, to change the backstop and goal locations, to reduce the amount of asphalt in the playground, to approve the as-built increased site elevations, and to install site-screening in certain locations.

6. The City would not deem the School District's modification application complete until the School District held a public meeting to obtain public comment on June 14, 2021.

7. At the public meeting, neighbors expressed concerns about the height of the southern playfield and concerns that people using the playfields would be able to see in their backyards.

8. Attached as Exhibit A is a true and correct copy of the Notification of Hearing Examiner's Decision in File Nos. CL3#010-19, VAR#004-19, ADJ#027-19, and CAO#027-19, with attachments, dated March 2, 2020.

9. Attached as Exhibit B is a true and correct copy of the Mitigated Determination of Non-Significance, File No. SEPA#035-19, dated December 10, 2019.

10. Attached as Exhibit C is a true and correct copy of the Notice of Application, Environmental Review, and Public Hearing in File Nos. CL3#010-19, VAR#004-19, ADJ#027-19, and CAO#027-19, dated December 30, 2019.

DECLARATION OF DR. PETER FINCH  
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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1 11. Attached as Exhibit D is a true and correct copy of the Overall Grading Plan  
2 approved by the City of Yakima in 2020.  
3

4 12. Attached as Exhibit E is a true and correct copy of the As-Built Grading Plan  
5 submitted to the City of Yakima with MOD#021-21.  
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10 I declare that the foregoing is true and correct to the best of my knowledge and  
11 subject to the penalty of perjury under the laws of the state of Washington.  
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15 Dated this 14th day of July, 2021, at Yakima, Washington.  
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Dr. Peter Finch, Acting Superintendent

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DECLARATION OF DR. PETER FINCH  
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CERTIFICATE OF SERVICE

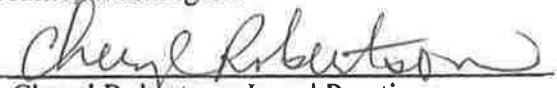
I certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused a true and correct copy of the foregoing

**DECLARATION OF DR. PETER FINCH** to be served on the following persons via the methods indicated below:

City of Yakima  
Community Development Department  
129 N. 2nd Street, 2nd Floor  
Yakima, WA 98901

- ☐ Via U.S. Mail, 1st class, postage prepaid
- ☒ Via Legal Messenger
- ☐ Via Facsimile
- ☐ Via Overnight Mail
- ☐ Via email

DATED this 14th day of July, 2021 at Seattle, Washington.

  
Cheryl Robertson, Legal Practice  
Assistant

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Perkins Coie LLP  
1201 Third Avenue  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000



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# EXHIBIT A

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DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Venport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2<sup>nd</sup> Floor, Yakima, WA 98901

ask.planning@yakimawa.gov • www.yakimawa.gov/services/planning

**NOTIFICATION OF HEARING EXAMINER'S DECISION**

**DATE:** March 2, 2020  
**TO:** Applicant, Adjoining Property Owners & Parties of Record  
**SUBJECT:** Notice of the Hearing Examiner's Decision  
**FILE #(S):** CL3#010-19, VAR#004-19, ADJ#027-19, CAO#027-19 & SEPA#038-19  
**APPLICANT:** West Valley School District  
**PROJECT LOCATION:** 7 N 88<sup>th</sup> Ave

On February 28, 2020, the City of Yakima Hearing Examiner rendered his decision on **CL3#010-19, VAR#004-19, ADJ#027-19 & CAO#027-19**, a proposal to construct a new 60,000 sq ft elementary school building in the R-1 zoning district with 147 parking spaces and other associated site amenities and improvements. This request includes a variance to exceed the building height limitation of 35 ft in this zoning district to allow a height of 44 ft, a critical areas review due to the site being in a wellhead protection area, and an administrative adjustment for the following: request to waive the sitescreeing requirement that would impose a 6-ft view-obscuring fence, installation of a digital sign and wall signs which are not otherwise allowed in residential zoning districts, and adjust the maximum height of 10 ft for signs set back more than 15 ft from the right-of-way to allow a height of 11 ft 6 inches. The application was reviewed at an open record public hearing held on February 13, 2020.

Enclosed is a copy of the Hearing Examiner's Decision. Any part of the Hearing Examiner's decision may be appealed to the Yakima City Council. Appeals shall be filed within fourteen (14) days following the date of mailing of this notice and shall be in writing on forms provided by the Planning Division. The appeal fee of \$340 must accompany the appeal application.

For further information or assistance, you may contact Associate Planner Eric Crowell at (509) 576-6736 or email to: [eric.crowell@yakimawa.gov](mailto:eric.crowell@yakimawa.gov).

*Eric M. Crowell*

Eric Crowell  
Associate Planner

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Date of Mailing: March 2, 2020  
Enclosures: Hearing Examiner's Decision

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**City of Yakima, Washington  
Hearing Examiner's Decision**

**February 28, 2020**

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**FEB 28 2020  
CITY OF YAKIMA  
PLANNING DIV.**

**In the Matter of an Application for )  
A Class (3) School Use, a Variance, )  
Administrative Adjustments and )  
Critical Areas Review Submitted by:**

**West Valley School District )**

**To Rebuild Apple Valley Elementary )  
School, Associated Parking Lots and )  
Other Improvements in the R-1 Zone )  
To be Located at 7 North 88<sup>th</sup> Avenue )**

**CL(3)#010-19  
VAR#004-19  
ADJ#027-19  
SEPA#038-19  
CAO#027-19**

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**CITY OF YAKIMA  
COMMUNITY DEVELOPMENT**

**A. Introduction.** The introductory findings relative to the public hearing process for this application may be summarized as follows:

(1) The open record public hearing for this application was held on February 13, 2020.

(2) The thorough staff report presented by Associate Planner Eric Crowell recommended approval of this application subject to conditions.

(3) Testimony in favor of the application which described reasons for the requested Variance and Administrative Adjustments was presented by the applicant's representative for this application, Matt Whitish of Design West Architects. He described details of the application which will result in substantial improvements to

West Valley School District  
Rebuild Apple Valley Elementary School  
To be Located at 7 North 88<sup>th</sup> Avenue  
CL(3)#010-19; VAR#004-19; ADJ#027-19;  
SEPA#038-19; and CAO#027-19

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various aspects of the current elementary school facility and which have been designed to promote compatibility with surrounding land uses.

(4) One written public comment was submitted. No other testimony was presented for or against the application at the public hearing.

(5) This decision has been issued within ten business days of the open record public hearing.

**B. Summary of Decision.** The Hearing Examiner approves this application for the reasons and subject to the conditions set forth in Eric Crowell's staff report.

**C. Basis for Decision.** Based upon the Hearing Examiner's view of the site with no one else present on February 10, 2020; his consideration of the staff report, exhibits, testimony and other evidence that was presented at an open record public hearing on February 13, 2020; and his review of the Yakima Urban Area Comprehensive Plan (Plan 2040) and the Yakima Urban Area Zoning Ordinance, Title 15 of the Yakima Municipal Code (YMC); the Hearing Examiner makes the following:

## **FINDINGS**

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COMMUNITY DEVELOPMENT

**I. Property Owner.** The property owner is the West Valley School District, 8902 Zier Road, Yakima, Washington 98908.

**II. Applicant.** The applicant is West Valley School District c/o Angela Von Essen, 8902 Zier Road, Yakima, Washington 98908.

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West Valley School District  
Rebuild Apple Valley Elementary School  
To be Located at 7 North 88<sup>th</sup> Avenue  
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**III. Location.** The location of Apple Valley Elementary School is 7 North 88<sup>th</sup> Avenue, Yakima, Washington. The Assessor's tax parcel numbers for the site are 181319-42006, 42020 and 42021.

**IV. Application.** The main aspects of the application are summarized as follows:

(1) The West Valley School District proposes a complete replacement of the Apple Valley Elementary School building with new parking lots on the existing site located on the east side of North 88<sup>th</sup> Avenue at 7 North 88<sup>th</sup> Avenue. The new elementary school would be financed by a bond issue that was voted on and approved by the community.

(2) The applications for a Type (3) Review, a height Variance, Administrative Adjustments and Environmental Review were received on October 23, 2019. The application for Critical Areas Review was received on December 18, 2019. The applications were deemed complete for processing on December 20, 2019. The applications are being processed under the provisions of YMC Chapter 15.15 (Type (3) Review), Chapter 15.21 (Variances), Chapter 15.10 (Administrative Adjustment of Standards), Chapter 6.88 (Environmental Review) and Chapter 15.27 (Critical Areas). Pursuant to YMC Chapter 1.43, the Hearing Examiner has the authority to make a decision on matters prescribed by YMC Title 15.

(3) This site previously underwent a separate Environmental Review for the demolition of the existing school (SEPA#035-19), which was approved for a Mitigated Determination of Non-Significance (MDNS) on December 10, 2019, and was not appealed. The existing school building has been demolished as of the date of the public hearing.

(4) The testimony at the hearing indicated that the proposed new building would be approximately 60,500 square feet in size with approximately 150 parking spaces. A Variance has been requested to allow a small portion of the building to be 44 feet high in order to allow at least 80 rooftop HVAC units to be maintained by use of a stairwell and an elevator and in order to also allow parapets to be used to help conceal that rooftop equipment from view on a roof that would otherwise comply with the 35-foot height limitation in the Single-Family Residential (R-1) zoning district.

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West Valley School District  
Rebuild Apple Valley Elementary School  
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(5) An Administrative Adjustment has been requested to allow a digital sign for the school that would be located in the R-1 zoning district more than fifteen feet from the public right-of-way to exceed the maximum height of ten feet by one foot, six inches and to allow wall signage on the building to identify the school and the location of the gymnasium and library.

(6) An Administrative Adjustment has also been requested to allow the existing fencing to remain in place to avoid having to remove the existing fencing of adjacent residential uses and to avoid losing visibility of school property provided by existing chainlink fencing that would be lost by installation of new six-foot-high view-obscuring fencing.

**V. Notices.** Notices of the February 13, 2020, open record public hearing were provided in the following manners:

Posting of a land use action sign on the property:	October 11, 2019
Mailing of hearing notice to owners within 300 feet:	December 30, 2019
Publishing of hearing notice in the Yakima Herald-Republic:	December 30, 2019

**VI. Environmental Review.** The main aspects of the environmental review process for this application may be summarized as follows:

(1) This project was reviewed under the State Environmental Policy Act because it involves the construction of more than 12,000 square feet of building area and more than 40 paved parking spaces and as such exceeds the City's flexible threshold for SEPA established in Chapter 6.88 of the Yakima Municipal Code. Notice of SEPA review was mailed on December 30, 2019, and no public comments were received within the comment period ending on January 21, 2020.

(2) A Determination of Nonsignificance (DNS) was issued by the City of Yakima SEPA Responsible Official on January 22, 2020. This determination was based on SEPA guidelines. No appeals of the DNS were filed during the appeal period that ended on February 5, 2020.

West Valley School District  
Rebuild Apple Valley Elementary School  
To be Located at 7 North 88<sup>th</sup> Avenue  
CL(3)#010-19; VAR#004-19; ADJ#027-19;  
SEPA#038-19; and CAO#027-19

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**VII. Transportation Capacity Management Ordinance.** This proposal was exempt from Concurrency Analysis because it does not access or have direct frontage upon the City arterial street system. However, the applicant submitted a Traffic Impact Analysis for the new school which indicated that under both existing and future conditions the four observed intersections all currently operate at LOS C or better and will operate at LOS D or better in the future with or without the construction of the new school.

**VIII. Zoning and Land Uses.** The zoning of the subject 10.37-acre site is Single-Family Residential (R-1) and its former and proposed land use is as an elementary school facility with associated parking areas and playground areas. Surrounding properties are all within the Single-Family Residential (R-1) zoning district and have the following current land uses:

<u>Location</u>	<u>Land Uses</u>
North	Vacant lot
South	Detached Single-Family Dwellings
East	Detached Single-Family Dwellings
West	Common Wall Attached Single-Family Dwellings, Detached Single-Family Dwellings and Two-Family Dwellings

**IX. Class (3) Review Criteria.** The Hearing Examiner's findings and conclusions are required to set forth specific reasons and ordinance provisions demonstrating that his decision satisfies the following requirements set forth in Subsections 15.04.020(C) and 15.15.040(E) of the Yakima Urban Area Zoning Ordinance, Title 15 of the Yakima Municipal Code (YMC):

West Valley School District  
Rebuild Apple Valley Elementary School  
To be Located at 7 North 88<sup>th</sup> Avenue  
CL(3)#010-19; VAR#004-19; ADJ#027-19;  
SEPA#038-19; and CAO#027-19

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**(1) Compliance and Compatibility with Policies and Development Criteria of the Comprehensive Plan.** The Future Land Use Map of the Yakima Comprehensive Plan 2040 designates the subject property as being suitable for Low Density Residential development. The following Goal and Policy apply to this proposal:

(a) Goal 2.3: Preserve and enhance the quality, character, and function of Yakima's residential neighborhoods.

(b) Policy 2.3.6: Allow some compatible nonresidential uses in residential zones, such as appropriately scaled schools, churches, parks, and other public/community facilities, home occupations, day care centers, and other uses that provide places for people to gather. Maintain standards in the zoning code for locating and designing these uses in a manner that respects the character and scale of the neighborhood.

The applicant's Type (3) Review narrative indicates that the new elementary school facilities would replace an elementary school building with a new elementary school building that would be nearly twice the size of the former one. The building would be located on property away from existing residences so as to respect the character and scale of the neighborhood. It would have separate bus loading and student drop-off parking areas and lanes which would improve traffic circulation in and out of the site. That feature would minimize vehicles parking or waiting in line on nearby streets so as to enhance the quality, character and function of the neighborhood and so as to be in compliance and compatible with the City's Comprehensive Plan 2040.

**(2) Compliance and Compatibility with the Intent and Character of the Single-Family Residential (R-1) Zoning District.** The proposed new Apple Valley Elementary School facility would be compliant and compatible with the intent and character of the R-1 zoning district set forth in YMC §15.03.020(B) to accommodate

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public uses which are compatible with the district and serve the residents of the district. The new facility would be more compatible with the district, due to its design, than the facility that it would replace and would continue to serve the residents of the district. The proposed replacement elementary school facility would also be compliant and compatible with the intent of the R-1 zoning district set forth in YMC Table 4-1 in YMC Chapter 15.04 which lists Elementary, Middle and High Schools as Class (3) uses in the R-1 zoning district so long as the proposed facility satisfies the criteria for approval of a Class (3) use and for approval of the requested height Variance, the requested Administrative Adjustments and the requested Critical Areas Review.

**(3) Compliance with the Provisions and Standards Established in the Zoning Ordinance.** Applicable zoning ordinance provisions and development standards established in the zoning ordinance include the following:

(a) Parking Spaces: YMC Table 6-1 in YMC §15.06.040 requires elementary schools to provide three parking spaces for each classroom (here 81 parking spaces), or one parking space for every three seats (54-inch bench-type seating) in the assembly area (here 75 parking spaces), whichever is greater. Here approximately 150 parking spaces are proposed which is considerably more than the required number of parking spaces.

(b) Landscaping of Parking Lots: YMC §15.06.090(A) requires parking lots with five or more spaces to have landscaping which totals 10% of the total parking area. This landscaping area may be included to satisfy the lot coverage requirements of YMC Table 5-1. YMC §15.06.090(C) also requires that one tree from an approved list be planted for every 15 single-row parking stalls or every 30 double-row parking stalls within a parking lot.

(c) Lighting of Parking Lots: YMC §15.06.100 requires that lighting shall be provided to illuminate any off-street parking or loading space used at night. When lighting is provided, YMC §15.06.100 requires that the lighting be directed to reflect away from adjacent and abutting properties. Parking lots

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adjacent to residential districts or uses must be designed with down-shielding and luminaries that create no lighting pollution upon adjacent properties. A photometric lighting plan is required for any parking lot located adjacent to or abutting residential properties.

(d) Lot Coverage: YMC Table 5-1 in YMC Chapter 15.05 allows 60% lot coverage in the R-1 zoning district. Following final build out of the new school with associated parking lots and other improvements, the total impervious surface of the subject property will be approximately 49%.

(e) Setbacks: YMC Table 5-1 in YMC Chapter 15.05 requires a front building setback of at least 45 feet from the centerline of rights-of-way and at least 20 feet from the property line; a rear building setback of at least 15 feet from the property line; and side building setbacks of at least 5 feet from the property lines. Since the footprint of the previous school was on a single parcel, the new school will have to be able to fit within Assessor's parcel number 181319-42020 or a Short Plat Exemption will be required in order to modify the lot lines.

(f) Sitescreening: YMC Table 7-1 in YMC §15.07.050 requires site-screening Standard C along the north, south and east property lines and site-screening Standard A (or a higher standard) along the west property line. YMC §15.07.040(A) states that sitescreening Standard C is a six-foot-high view-obscuring fence made of wood, masonry block or slatted chainlink and that sitescreening Standard A is a ten-foot-wide landscaped planting strip with trees at twenty-foot to thirty-foot centers, shrubs and groundcover. YMC §15.07.060 states that sitescreening Standard A shall apply wherever sitescreening is required under YMC Table 7-1 and the adjoining land use is separated from the proposed use or development by a collector or local access street. The applicant has requested an Administrative Adjustment of this standard to allow the existing combination of sitescreening standards to remain in place to avoid the need to replace existing fencing of neighboring residences and to preserve the visibility of areas of the school site that is currently provided by the existing chainlink fencing. The written comment from two neighbors also favored this adjustment.

(g) Public facilities: City of Yakima sewer and water are available. The property is accessed by North 88<sup>th</sup> Avenue which is a Local Access street. YMC §15.05.020(J) requires new sidewalk along the frontage of a site where, as here, a

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sidewalk exists within 200 feet of the development on the same side of the street. Curb, gutter and sidewalk must be installed along the North 88<sup>th</sup> Avenue frontage of the site as a part of the construction of the new school facility. Public facilities improved in accordance with the conditions required by this decision will be adequate to serve the new school facility.

**(4) Compliance with Additional Development Standards Established in the Zoning Ordinance and in other Applicable Regulations.** Additional development standards established in the zoning ordinance and in other applicable regulations cited in comments of City departments at a Development Services Team meeting held on November 5, 2019, and in written comments from public agencies with an interest in the proposed development include the following:

(a) Code Administration: Section 507 and Appendix B of the 2015 International Fire Code (IFC) provide that additional fire hydrant(s) may be required depending on the size and Type of Construction of the proposed building(s) and availability and fire flow of existing public fire hydrants. The final site plan will need to reflect the location of existing and/or proposed fire hydrants, if any. A State licensed architect is required to be in responsible charge for the design of buildings over 4,000 square feet, and shall be responsible for all submittals related to the project. These findings are not intended to be an exhaustive review of this proposal.

(b) Engineering: This project will require an ENG permit and a Street Break permit for all work within the right of way.

(c) Surface Water: Surface water comments are as follows:

(i) As this project involves clearing or grading one acre or more, a Large Project Stormwater Permit shall be required from the applicant which requires drainage plan(s) and calculations; a stormwater maintenance agreement and plan; proof that the maintenance agreement was recorded in the Yakima County Auditor's Office; a Construction Stormwater Pollution Prevention Plan (SWPPP) or Erosivity Waiver which shall be reviewed and approved by the Surface Water Engineer prior to any

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grading or construction; in lieu of turning in a Construction Stormwater Pollution Prevention Plan, the applicant can satisfy this requirement by obtaining a Construction Stormwater General Permit through the Washington State Department of Ecology, in which case a copy of the signed General Permit shall be delivered to the Surface Water Engineer; and a narrative explaining how Core Elements 1-8 are being satisfied.

(ii) Grading and/or building permits shall not be issued without the project site first passing an erosion control inspection.

(iii) Complete stormwater design plans, specifications and runoff/storage calculations supporting the stormwater design are required pursuant to the Eastern Washington Stormwater Manual and City of Yakima standards. These plans and control measures must be completed by a licensed Professional Engineer and then be reviewed and approved by the City of Yakima Surface Water Engineer prior to construction.

(iv) In accordance with the August 2019 edition of the Department of Ecology's Stormwater Management Manual for Eastern Washington (SMMEW), Underground Injection Control (UIC) wells constructed on or after February 3, 2006 are considered new and must be registered with the Department of Ecology (DOE) 60 days prior to construction. UIC wells that receive polluted runoff shall retain the larger of the 100-year 3-hour and 100-year 24-hour storms and shall be designed for treatment using Table 5.23 of the SMMEW.

(d) Wastewater: Sewer connection to be made per YMC and City Sewer standards.

(e) Nob Hill Water Association: The developer will need to contact Nob Hill Water Association for a cost estimate for meter upgrades and location. Backflow protection will be required.

(f) Washington State Department of Ecology: The Washington State Department of Ecology submitted comments on January 16, 2020, to the effect that if the project anticipates disturbing ground with the potential for stormwater discharge off-site, the NPDES Construction Stormwater General Permit is recommended. This permit requires that the SEPA checklist fully disclose anticipated activities including building, road construction, and utility placements. Obtaining a permit may take 38-60 days. The permit requires that a

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Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) shall be prepared and implemented for all permitted construction sites. These control measures must be able to prevent soil from being carried into surface water and storm drains by stormwater runoff. Permit coverage and erosion control measures must be in place prior to any clearing, grading, or construction. In the event that an unpermitted Stormwater discharge does occur off-site, it is a violation of Chapter 90.48 RCW, Water Pollution Control and is subject to enforcement action. More information on the stormwater program may be found at <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>. Please submit an application or contact Lloyd Stevens, Jr. at the Department of Ecology, 509-574-3991 with questions about this permit.

(g) Washington State Department of Health: The Washington State Department of Health indicated on December 30, 2019, that its comments previously submitted in relation to the demolition of the existing Apple Valley Elementary School are also submitted in response to the NOA/ODNS for the replacement project. While a critical areas permit due to the wellhead protection area is noted in the NOA, the SEPA checklist does not identify the critical area (Question B.8.g), so just reiterating for the record. The City may also wish to consider supplemental information provided in our December 5 email. The project site is not only within but takes up a large portion of the wellhead protection area (WHPA) associated with a Group A public water system which is also shown as high susceptibility area. The southwest corner of the site is closest to the wellhead. As such, various portions of the site are classified as being in Wellhead Protection Zones 1, 2, and 3 under YMC §15.27.820(A)(1), and the project is subject to review under the CARAs provisions (Part 8) of Chapter 15.27 YMC, but the SEPA checklist does not identify the critical area.

(h) Public Comments from Two Neighbors: Neighboring property owners John and Candice Manfredi by letter received on January 23, 2020 expressed support for the applicant's request to leave the existing perimeter fencing in lieu of site-obscuring fencing; support for the applicant's requested sign adjustments to allow postings of interest to the neighborhood; and support for the applicant's requested height adjustment to accommodate the pleasing architectural appearance of the building. The letter requested that stormwater drainage facilities be designed and located far enough north of the south property line to prevent water from seeping onto adjacent residential ground surfaces or crawl spaces; requested

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that curb, gutter and sidewalks be completed with the school work rather than deferred until later; requested that the District honor a previous July 15, 2019, petition from 60 property owners requesting that a list of names and phone numbers of responsible District and contractor staff be provided or posted who could be contacted 24/7 to report dust problems and/or that the SEPA document require mailing same to surrounding residents. The Planning Division responded to the effect that the applicant will be required to comply with all stormwater regulations required by the City and the Department of Ecology, including a Large Project Stormwater Permit requiring drainage plans and adherence to the August 2019 edition of the Stormwater Management Manual for Eastern Washington; that new curb, gutter and sidewalk construction will be required commensurate with the construction of the new school; and that the Yakima Regional Clean Air Agency which regulates dust within the City submitted comments relative to the demolition work which are applicable to the construction and which include the requirement for agency approval of a Dust Control Plan prior to the start of any construction work. The City's final SEPA document was issued prior to receipt of this letter and was not appealed by the February 5, 2020, deadline.

**X. Variance Review Criteria.** The applicant is requesting a Variance from the building height standard prescribed by YMC Table 5-1 in YMC Chapter 15.05. The requested Variance is to allow a maximum building height of 44 feet in excess of the 35-foot standard in the R-1 zoning district for about 8% of the roof area in order to conceal at least 80 rooftop HVAC units on the roof and to allow an elevator and internal stairwell. YMC Chapter 15.21 allows the Hearing Examiner to vary the strict application of zoning ordinance requirements. The six criteria for a Variance set forth in YMC §15.21.030 are all satisfied so as to allow for approval of the requested building height Variance for the following reasons:

**(1) That granting the variance will be consistent with the general purpose and intent of this title and will not be injurious to the neighborhood or otherwise**

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**detrimental to the public welfare.** The applicant's narrative establishes the fact that this criterion is satisfied because only about 8% of the entire flat (low slope) roof area would be higher than the 35-foot standard in the R-1 zoning district and because the extra height in limited locations would serve the aesthetic purpose of helping to conceal mechanical equipment on the roof from view with parapet walls and also to allow access to the roof for maintenance by means of an internal stairwell and elevator to the roof. This limited deviation from the building height standard for aesthetic purposes would be consistent with the intent of the R-1 zoning district to allow public uses that mitigate potential impacts to adjacent residences. That being the case, the requested height Variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

**(2) That granting the variance will not permit the establishment of any use not permitted in a particular zoning district.** Granting of this Variance will not permit the establishment of any use not permitted in this zoning district. An elementary school is a Class (3) use in the R-1 zoning district which may be allowed following a public hearing. In addition, the proposed facility would replace an elementary school which has been recently demolished.

**(3) That unique circumstances exist. There must exist special circumstances or conditions, fully described in the findings, applicable to the land or structures for which the variance is sought. The special circumstances or conditions must be peculiar to such land or structures and not generally applicable to land or structures in the neighborhood. The special circumstances or conditions must also be such that the strict application of the provisions of this title would deprive the applicant of reasonable use of such land or structure.** The site's use as an elementary school is unique among its neighbors because other adjacent properties are primarily residential which do not require a structure of this height in order to accomplish its intended use and be aesthetically pleasing. A 44-foot building height for about 8% of the roof area would allow for an internal stairwell and an elevator to maintain rooftop HVAC units and parapets to conceal them which are reasonable uses of the elementary school building that would not be allowed under a strict application of YMC Title 15.

**(4) That an unnecessary hardship exists. It is not sufficient proof of hardship to show that lesser cost would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be**

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established on this basis by one who purchases without knowledge of the restrictions. It must result from the application of this title to the land or structure. It must be suffered directly by the property in question, and evidence of variance granted under similar circumstances shall not be considered. Neither nonconforming uses nor neighboring lands or structures, nor buildings in other zoning districts, shall be considered as controlling factors for the issuance of a variance. Denial of the requested building height Variance would result in an unnecessary hardship to the applicant because there is no evidence in the record to suggest that the inability to access the roof of the building by means of a stairwell and elevator in order to maintain at least 80 rooftop HVAC units would be a necessary hardship. There was no objection by any agency or by any member of the public to the stairwell or elevator that would be used to maintain rooftop HVAC units or to the limited use of parapets to help conceal them. Evidence of Variances granted under similar circumstances, evidence of nonconforming uses, evidence of neighboring lands or structures and evidence of buildings in other zoning districts will not be the basis for granting the Variance.

(5) That granting of the variance is necessary for the reasonable use of the land or structure. The use of rooftop HVAC units, of an internal stairwell and elevator to maintain them and of parapets to help conceal them from view are reasonable uses of the proposed school building which necessitate the requested height Variance.

(6) That the variance as granted by the hearing examiner is the minimum variance that will accomplish this purpose. All the evidence presented at the hearing was to the effect that rooftop mechanical equipment is necessary for the reasonable use of the proposed elementary school and that a height of 44 feet for approximately 8% of the proposed school roof is the minimum height needed for both an internal stairwell and elevator and parapets to maintain and help conceal the mechanical equipment. The requested Variance would therefore under the undisputed evidence of this matter be the minimum Variance that would accomplish the purpose of the proposed school building.

**XI. Administrative Sign Adjustment.** YMC §15.10.020 provides flexibility by allowing certain development standards in YMC Chapters 15.05 through 15.08 to be administratively adjusted. A particular standard may be reduced or modified so long as the reviewing official determines that the adjustment is consistent with the purpose of

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the zoning ordinance, is consistent with the intent and purpose for the standard and will accomplish one or more of five objectives. The five criteria listed in YMC §15.10.020 apply, or do not apply, to the proposal in the following ways:

**(1) Allow buildings to be sited in a manner that maximizes solar access:** This criterion does not apply since it is not the purpose of the proposed digital sign and wall signage to maximize solar access to the sign or to any other building.

**(2) Allow zero lot line or common wall construction in conformance with the provisions of this title:** This criterion does not apply since no zero lot line construction is proposed.

**(3) Coordinate development with adjacent land uses and physical features:** YMC §15.08.135(C) does not allow digital signs within the R-1 zoning district unless a location Administrative Adjustment is allowed pursuant to YMC §15.08.170(B) and (C). YMC Table 8-3 relative to Sign Height and Setbacks for freestanding signs allows a maximum sign height of 5 feet where the setback from a right-of-way is 15 feet or less and 10 feet where the setback is more than 15 feet from a right-of-way. Here the proposed digital sign would be located in an R-1 zoning district and would be 11 feet 6 inches high in a location that would be more than 15 feet from a public right-of-way. The sign would have 14 square feet of digital electronic message center (EMC) area subject to the EMC requirements set forth in YMC §15.08.135 with an internally illuminated area above that, which size would comply with the sign size limitations of YMC §15.08.135(A) and YMC Table 8-2. Despite the proposed digital sign location and height deviations from prescribed sign standards and the proposed wall signage to identify the school and the location of the gymnasium and library, the signage would coordinate the principal elementary school use of the parcel with adjacent land uses by helping inform the public about school-related events and activities, as well as by helping the public be aware of the location of the gymnasium and library which are available for after-hours use by the public. The slightly greater height of the sign would allow the bottom of the sign to be 8 feet above ground level so as to be visible from the street without obstructions and so as to allow people to walk under it.

**(4) Permit flexibility of design and placement of structures and other site improvements:** The proposed digital sign would permit flexibility in the design and type of the signage by more effectively advising parents, students, relatives, friends and other motorists of programs, activities and events at the elementary school. The

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proposed digital signage location within an R-1 zoning district at a height of slightly more than 10 feet and the proposed wall signage would also be consistent with other existing and permitted signage on other elementary school grounds within the City, the most recent such approvals being for Garfield Elementary School, for Nob Hill Elementary School and for Summitview Elementary School.

**(5) Allow development consistent with a specific sub-area plan:** This criterion does not apply since no sub-area plans exist to address this area.

The requested location and height of signage would be consistent with the purpose of the zoning ordinance to allow compatible nonresidential public uses in the R-1 zoning district; would be consistent with the objectives of the sign location and height standards to require uses in the R-1 zoning district to be compatible with residential uses and to be limited in scale to their principal uses; and would accomplish two of the five objectives for Administrative Adjustments even though only one of those five objectives must be served in order to approve the requested Administrative Adjustments for the proposed digital and wall signage.

**XII. Administrative Sitescreening Adjustment.** As indicated in the previous section, YMC §15.10.020 provides flexibility by allowing certain development standards in YMC Chapters 15.05 through 15.08 to be administratively adjusted. A particular standard may be reduced or modified so long as the reviewing official determines that the adjustment is consistent with the purpose of the zoning ordinance, is consistent with the intent and purpose for the standard and will accomplish one or more of five objectives. The five criteria listed in YMC §15.10.020 apply, or do not apply, to the proposal in the following ways:

**(1) Allow buildings to be sited in a manner that maximizes solar access:** This criterion does not apply since it is not the purpose of the proposed sitescreening

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adjustment to maximize solar access to any buildings.

**(2) Allow zero lot line or common wall construction in conformance with the provisions of this title:** This criterion does not apply since no zero lot line construction is proposed.

**(3) Coordinate development with adjacent land uses and physical features:** The applicant's narrative indicates that existing fencing is installed around the entire property at all R-1 properties. The only comments from neighbors favored retention of the existing fencing rather than new site-obscuring fencing. No request to replace existing fencing was submitted in writing or by testimony of adjacent homeowners. The evidence rather indicated that maintaining the existing fencing around the school would best coordinate development of the new school with adjacent land uses because that would maintain fencing already installed around the site which has served the purpose of sitescreening for many years and because that would avoid unnecessarily using funds which could instead be used for other purposes. This is especially the case because the new school building would be located on the property 130.5 feet away from the nearest property line even though the standard side yard building setback in the R-1 zoning district is only 5 feet and because the visibility allowed by existing chainlink fencing would not be allowed by installation of a new six-foot-high view-obscuring fence which is opposed by the only commenting neighbors.

**(4) Permit flexibility of design and placement of structures and other site improvements:** Allowing the existing fencing would permit flexibility of design and placement of structures and other site improvements where requiring new fencing would be opposed by the only commenting neighbors and would not allow them to have a view across the school property which they now have and prefer to maintain.

**(5) Allow development consistent with a specific sub-area plan:** This criterion does not apply since no sub-area plans exist to address this area.

The requested adjustment of sitescreening standards so as to allow the existing fencing around the site to remain in place would be consistent with the purpose of the zoning ordinance to allow compatible nonresidential public uses in the R-1 zoning district; would be consistent with the objectives of sitescreening provisions to protect existing uses from visual and other impacts created by new uses where the only

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commenting neighbors prefer to have a view across the school property, where this is a replacement use and where the distance to the new school building helps to protect adjacent land uses from visual impacts; and would accomplish two of the five objectives for Administrative Adjustments even though only one of those five objectives must be served in order to approve the requested Administrative Adjustment for the existing fencing to continue to serve as sitescreeening.

**XIII. Critical Areas Review:** Compliance with Critical Areas Ordinance provisions involve the following considerations and findings:

(1) Critical Area Development Authorization Required: Pursuant to YMC §15.27.300(A), no new development, construction or use shall occur within a designated critical area without obtaining a development authorization in accordance with the provisions of this chapter, except for those provided for in YMC §15.27.303.

(2) Wellhead Protection Areas: Pursuant to YMC §15.27.810(B), the CARA map includes those wellhead protection areas for which the City of Yakima has maps. Wellhead protection areas are required for all Class A public water systems in the state of Washington. The determination of a wellhead protection area is based upon the time of travel of a water particle from its source to the well. Water purveyors collect site-specific information to determine the susceptibility of the water source to surface sources of contamination. Water sources are ranked by the Washington State Department of Health with a high, moderate or low susceptibility to surface contamination. Wellhead protection areas are defined by the boundaries of the 10-year time of groundwater travel, in accordance with WAC 246-290-135. For purposes of this chapter, all wellhead protection areas shall be considered highly susceptible.

(3) Critical Aquifer Recharge Areas Classification: YMC §15.27.820(A)(1), provides that critical aquifer recharge areas are those areas with a critical recharging effect on aquifers used for potable water. Wellhead protection involves the management of activities that have a potential to degrade the quality of groundwater produced by a supply well. The City is classified into four wellhead protection zones that are

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based on proximity to and travel time of groundwater to Group A and Group B water source wells within the City limits, and are designated using guidance from the Washington Department of Health Wellhead Protection Program pursuant to Chapter 246-290 WAC.

(4) Wellhead Protection Zones: Wellhead Protection Zone 1 represents the land area overlying the six-month time-of-travel zone of any Group A water source well and/or land area overlying any Group B wellhead protection area. Wellhead Protection Zone 2 represents the land area that overlies the one-year time-of-travel zone of any Group A water source well, excluding the land area contained within Wellhead Protection Zone 1. Wellhead Protection Zone 3 represents the land area that overlies the five-year and ten-year time-of-travel zones of any Group A water source well, excluding the land area contained within Wellhead Protection Zone 1 or 2. Wellhead Protection Zone 4 represents all the remaining land area in the City not included in Wellhead Protection Zone 1, 2 or 3.

(5) Wellhead Protection Zone Performance Standards: Pursuant to YMC §15.27.820(C)(4):

(a) Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

(b) Any uses or activities which involve storing, handling, treating, using, producing, recycling or disposing of hazardous materials or other deleterious substances shall comply with the standards that apply to the wellhead protection zone in which they are located. Residential uses of hazardous materials or deleterious substances are exempt from certain standards.

(c) If a property is located in more than one wellhead protection zone, the Director of Community Development shall determine which standards shall apply based on an assessment evaluation of the risk posed by the facility or activity. The assessment evaluation shall include, but not be limited to: (i) the location, type, and quantity of the hazardous materials or deleterious substances on the property; (ii) the geographic and geologic characteristics of the site; and (iii) the type and location of infiltration on the site.

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(d) Development within Wellhead Protection Zone 1 or 2, as well as any facility or activity existing as of adoption of this title within which hazardous materials or other deleterious substances are present, shall implement the relevant performance standards as described in YMC §15.27.820(C)(4)(a) - (j).

(6) Determination: Consistent with YMC §15.27.031(C)(2), the Administrative Official here reviewed the available information pertaining to this proposal and made a determination that "Critical Areas was present, but there is no impact."

(7) Wellhead Protection Zones 1 and 2: Pursuant to YMC §15.27.820(C)(4)(j), all development or redevelopment shall implement Best Management Practices (BMPs) for water quality and quantity, as approved by the Director of Community Development, such as biofiltration swales and use of oil-water separators, BMPs appropriate to the particular use proposed, clustered development and limited impervious surfaces.

(8) Wellhead Protection Zone 3: Pursuant to YMC §15.27.820(C)(5), development within Wellhead Protection Zone 3 shall implement appropriate BMPs and comply with the performance standards for vehicle fueling, maintenance and storage areas; loading and unloading areas; well construction and operation; fill materials; cathodic protection wells; and underground hydraulic elevator cylinders in applicable subsections in subsection (C)(4) of this section.

(9) Standard Development Permit Required: Per YMC §15.27.309, it has been determined that a Standard Development Permit is required.

(10) Criteria Satisfied: This proposal satisfies the following criteria necessary to grant the development authorization that are prescribed by YMC §15.27.311 entitled "Authorization Decisions – Basis for Action":

(a) Impact of the project to critical area features on and abutting property: The impact to critical area features will be minimal as long as the construction of the new school takes into consideration the wellhead protection area that is located on the subject property.

(b) Danger to life or property that would likely occur as a result of the project: The school will be located within a wellhead protection area. There are no flood hazard or habitat concerns such as floodplains or wetlands.

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(c) Compatibility of the project to critical area features: Pursuant to YMC §15.27.820(B), construction of the school is not an activity prohibited from taking place within a wellhead protection area.

(d) Conformance with applicable development standards: All applicable standards of YMC Chapter 15.27 will be met.

(e) Compliance with flood hazard mitigation requirements of YMC §15.27.400 through §15.27.436: The subject property is not located within a flood hazard area.

(f) Adequacy of the information provided by the applicant or available to the division: The application submitted is adequate for review.

**XIV. Consistency of the Proposed Use with Development Regulations and the Comprehensive Plan under the Criteria Required by YMC §16.06.020B.**

Compliance with YMC §16.06.020B is determined by consideration of the following factors:

(1) **The types of land uses permitted at the site.** The proposed new elementary school facility is a Class (3) use in the R-1 zoning district that is permitted at the site if the applicable criteria for a Class (3) use with a building height Variance, Administrative Adjustments and Critical Areas Review are satisfied, as is the case here.

(2) **The density of residential development or the level of development such as units per acre or other measures of density.** Residential density is not being increased and the proposed new elementary school facility will be consistent with the 60% lot coverage density limitation for the R-1 zoning district.

(3) **The availability and adequacy of infrastructure and public facilities.** Infrastructure and public facilities are available and adequate for the proposed elementary school facility, particularly with the conditions required for this proposal.

(4) **The characteristics of the development relative to applicable development regulations.** Since the criteria are satisfied for a building height Variance, Administrative Sign Adjustments, an Administrative Sitescreening Adjustment and

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Critical Areas Review, the proposed elementary school facility would be consistent with those and other development regulations.

## CONCLUSIONS

Based upon the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction to approve Class (3) use applications, Variances and Administrative Adjustments under the circumstances prescribed by the zoning ordinance, which circumstances warrant approval of this Class (3) use; approval of the requested Variance to allow a building height of 44 feet rather than 35 feet for approximately 8% of the roof area; approval of the requested Administrative Sign Adjustments to allow a digital sign for the new school in the R-1 zoning district, to allow it to be 11 feet 6 inches high and to allow wall signage on the building for identification; approval of the requested Administrative Sitescreening Adjustment to allow existing fencing to serve as the sitescreening for the new school; and approval of the Critical Areas Determination, all subject to the conditions set forth below.

(2) Public notice requirements have been satisfied.

(3) SEPA review resulted in the issuance of a Determination of Nonsignificance on January 22, 2020, which became final without any appeals.

(4) The proposed new elementary school facility was exempt from Concurrency Analysis since it does not access or have direct frontage upon the City arterial street system, but a Traffic Impact Analysis for the new school was nevertheless conducted which determined that the four observed intersections all currently operate at Level of Service C or better and will in the future all operate at Level of Service D or better with or without the construction of the new school.

(5) This proposed new elementary school facility can be adequately conditioned by the conditions set forth below so as to ensure compatibility, compliance and consistency with the objectives and standards of the Comprehensive Plan and with the

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intent, the character, the provisions and the development standards of the zoning district and of the zoning ordinance, including the Variance, Administrative Adjustment and Critical Areas provisions thereof.

(6) As conditioned, this proposal satisfies all of the criteria for approval of a Class (3) use, for approval of a building height Variance, for approval of Administrative Sign Adjustments, for approval of an Administrative Sitescreening Adjustment and for a finding of compliance with Critical Areas regulations.

(7) Pursuant to YMC §15.15.060, no use requiring review by the Hearing Examiner shall be entitled to a development permit until and unless the Hearing Examiner approves a final site plan and issues a zoning decision. The zoning decision is not a building or development permit, and does not by itself authorize the construction or occupancy of any use or structure.

(8) The Hearing Examiner's decision is valid for one year from the date the decision is mailed, and the zoning decision for which the appeal period lapses without an appeal shall automatically expire and terminate one year from the date of mailing this decision pursuant to the situations described in YMC §15.12.060(A).

(9) This decision may be appealed to the Yakima City Council within the time and in the manner required by applicable City ordinance provisions.

## **DECISION**

The proposed Class (3) use consisting of the replacement of Apple Valley Elementary School and associated parking lots and other improvements; the requested building height Variance to allow the new building to be 44 feet in height at approximately 8% of the roof area; the requested Administrative Sign Adjustments to allow a digital sign in the R-1 zoning district, to allow it to be approximately 11 feet 6 inches high and to allow wall signage identifying the school and the location of the

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gymnasium and library; the requested Administrative Sitescreening Adjustment to allow the existing fencing around the school site to serve as the sitescreening; and the requested determination of compliance with Critical Areas regulations, which requests are all described in the applications designated CL(3)#010-19, VAR#004-19, ADJ#027-19, SEPA#038-19 and CAO#027-19, are **APPROVED** subject to the following conditions:

(1) Additional fire hydrant(s) may be required, depending on the size and type of construction of the proposed building(s), and availability and fire flow of existing public fire hydrants;

(2) A State licensed architect is required to be in responsible charge for the design of buildings over 4,000 square feet, and shall be responsible for all submittals related to the project;

(3) Stormwater shall be retained on-site and any applicable permits shall be obtained;

(4) Any applicable permits from the Yakima Regional Clean Air Agency shall be obtained;

(5) New curb, gutter, and sidewalk shall be installed along the North 88<sup>th</sup> Avenue frontage of the site;

(6) Development plans shall be consistent with the Best Management Practices (BMPs) for the Wellhead Protection Zone;

(7) One tree for every 15 single-row parking stalls or every 30 double-row parking stalls shall be planted within the parking lot;

(8) Lighting shall be installed for the parking lot if it will be used at night;

(9) A photometric lighting plan shall be submitted;

(10) A Short Plat Exemption shall be submitted to adjust or merge lot lines if

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any part of the new school crosses Assessor's parcel number 181319-42020 or fails to comply with building setback requirements on that parcel;

(11) A revised site plan shall display the following:

- (a) The location of existing and/or proposed fire hydrants, if any;
- (b) One tree for every 15 single-row parking stalls or every 30 double-row parking stalls within the parking lot; and
- (c) All parcel numbers and their respective boundary lines on the subject parcel.

(12) Compliance with all other applicable City, State and Federal regulations is required except as varied or adjusted by this decision.

**DATED** this 28<sup>th</sup> day of February, 2020.

  
\_\_\_\_\_  
Gary M. Cuillier, Hearing Examiner

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## EXHIBIT B

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## DEPARTMENT OF COMMUNITY DEVELOPMENT

Joan Davenport, AICP, Director

Planning Division

Joseph Calhoun, Manager

129 North Second Street, 2<sup>nd</sup> Floor, Yakima, WA 98901

ask.planning@yakimawa.gov · www.yakimawa.gov/services/planning

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**WASHINGTON STATE ENVIRONMENTAL POLICY ACT  
MITIGATED DETERMINATION OF NONSIGNIFICANCE  
CITY OF YAKIMA, WASHINGTON  
December 10, 2019**

**PROJECT DESCRIPTION:** Demolition of Apple Valley Elementary School, including three buildings totaling approximately 31,670 gross square feet of building space and the existing parking area comprised of 54 parking stalls. Existing play areas and play structures are also proposed to be removed during demolition of this site which is located in the R-1 zoning district. Future development of the new school is not connected to this demolition project and would be the subject of a separate permit process and associated SEPA Checklist.

**LOCATION:** 7 N. 88th Ave.  
**PARCEL NUMBER:** 181319-42006, -42020, & -42021  
**PROPONENT:** West Valley School District c/o Angela Von Essen  
**PROPERTY OWNER:** West Valley School District  
**LEAD AGENCY:** City of Yakima

**FILE NUMBER:** SEPA#035-19

**DETERMINATION:** The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

**FINDINGS, CONCLUSIONS AND IDENTIFIED ENVIRONMENTAL IMPACTS, AND MITIGATION MEASURES:** This Mitigated Determination of Nonsignificance (MDNS) is hereby conditioned upon the following mitigated measures, as authorized under WAC 197-11-660 and Yakima Municipal Code YMC § 6.88.160, and the Yakima Urban Area Comprehensive Plan, which contains goals, policies, and regulations which provide substantive authority to require mitigation under the State Environmental Policy Act (SEPA).

**I. FINDINGS**

**A. Project History**

1. A Pre-Application Meeting was held with the applicant and the Development Services Team (DST) on August 13, 2019.
2. On October 9, 2019, West Valley School District submitted an Environmental Review (SEPA#035-19) requesting approval for the demolition of Apple Valley Elementary School and its associated parking at 7 N. 88th Ave. in the Single-Family Residential (R-1) zoning district.
3. Review of the demolition of the existing school and the proposed construction of a

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new school were divided into two processes by request of the applicant.

B. Development Services Team (DST) Comments

1. On November 20, 2019, the Washington State Department of Ecology provided written comments which stated:

a. Hazardous Waste & Toxic Reduction

The Environmental Checklist indicates lead-containing materials are present. If the structure or its lead-bearing components designate as dangerous waste under Chapter 173-303 Washington Administrative Code, all related debris must be managed appropriately and cannot be disposed of as municipal trash. Additional information on lead in dangerous waste is available on the Department of Ecology website: <http://www.ecy.wa.gov/programs/hwtr/dangermat/lead.html>.

Mercury-containing fluorescent lamps that designate as dangerous waste may be managed as dangerous waste or universal waste under Washington Administrative Code 173-303-573. For more information, refer to Ecology's publication Universal Waste Rule for Lamps: <https://fortress.wa.gov/ecy/publications/summmypages/98407c.html>.

The "Mercury-Containing Lights - Proper Disposal" law, Chapter 70.275 RCW, requires that all persons, residents, government, commercial, industrial, and retail facilities and office buildings must recycle their end-of-life mercury-containing lights. This includes mercury-containing lamps that do not designate as dangerous waste, often called "green tip" lights. Although green tip lights may pass dangerous waste testing, they still contain mercury. Disposal to landfills is prohibited for all mercury-containing lights.

Some of the other building materials that can pose a risk to human health and the environment if not managed separately can include:

- Electronic equipment
- Self-luminous exit signs
- Mercury switches in light switches or thermostats
- Batteries from emergency lights, exit signs, security systems, and alarms
- Lighting ballasts
- PCB caulking
- Refrigerants from air conditioning systems (this was addressed in the checklist)
- Asbestos (this was addressed in checklist)

For compliance assistance, please contact Tami Applebee, Dangerous Waste Inspector, at 509-457-7147 or [tami.applebee@eyc.wa.gov](mailto:tami.applebee@eyc.wa.gov).

b. Toxics Clean-Up

The facility addressed in this proposal is on Ecology's Hazardous Site List, Ecology Facility/Site ID# 3464749, TCP Cleanup Site ID# 882. The Site is ranked 3. Hazardous substances may be present at the site in amounts and/or concentrations likely to affect human health or the environment. Site cleanup may be required in the future by Ecology under the Model Toxics Control Act. Site characterization and/or cleanup may be desirable prior to site alteration or development.

If you have any questions or would like to respond to these Toxics Clean-up comments, please contact Valerie Bound at 509-454-7886 or email at [valerie.bound@ecy.wa.gov](mailto:valerie.bound@ecy.wa.gov).

c. Water Quality—Project with Potential to Discharge Off-Site

If the project anticipates disturbing ground with the potential for storm water discharge off-site, the NPDES Construction Stormwater General Permit is recommended. This permit requires that the SEPA checklist fully disclose anticipated activities including building, road construction and utility placements. Obtaining a permit may take 38-60 days.

The permit requires that a Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) shall be prepared and implemented for all permitted construction sites. These control measures must be able to prevent soil from being carried into surface water and storm drains by stormwater runoff. Permit coverage and erosion control measures must be in place prior to any clearing, grading, or construction.

In the event that an unpermitted Stormwater discharge does occur off-site, it is a violation of Chapter 90.48 RCW, Water Pollution Control and is subject to enforcement action.

More information on the stormwater program may be found on Ecology's stormwater website at:

<http://www.ecy.wa.gov/programs/wq/stormwater/construction/>. Please submit an application or contact Lloyd Stevens, Jr. at the Dept. of Ecology, 509-574-3991, with questions about this permit.

2. On November 21, 2019, the Washington State Department of Health provided written comments which stated:
  - a. Critical Areas. The project site is not only within but takes up a large portion of the wellhead protection area (WHPA) associated with a Group A public water system (see details below), which is also shown as high susceptibility area. The SW corner of the site (shown in red) *[refers to a map in an email that may be viewed in the project file]* is closest to the well head. As such, various portions of the site are classified as being in Wellhead Protection Zones 1, 2, and 3 under YMC 15.27.820.A.1, & the project is subject to review under the CARAs provisions (Part 8) of Chapter 15.27 YMC. The SEPA checklist (Q.B.8.h – p. 16, Appendix 1) does not identify the critical area.
  - b. We note that the replacement development is to be done under a separate SEPA process; however, these same comments would apply to that project also. In consideration of work efficiency, perhaps the City & District could discuss whether it would be advantageous to prepare any critical areas work to encompass both projects.

*[Staff Note: The Critical Areas Review will be completed during the new school development process.]*

3. On December 3, 2019, the Yakima Regional Clean Air Agency provided written comments which stated:



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- a. Prior to demolishing any structures an asbestos survey must be done by a CITY OF YAKIMA  
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- b. Any asbestos found must be removed by a licensed asbestos abatement contractor prior to demolition;
- c. A Notification of Demolition and Renovation (NODR) application must be filed and approved by YRCAA with the appropriate fees;
- d. Contractors doing demolition, excavation, clearing, construction, or landscaping work must file a Dust Control Plan with YRCAA and get approval, prior to the start of any work;
- e. Air emission impact from the development, during demolishing and construction must be addressed through proper planning and implementation;
- f. No air emissions shall be transported during demolishing and construction beyond the property boundary in a quantity that interferes unreasonably with the use and enjoyment of the property owner upon which the material may be deposited or is detrimental to the health, safety or welfare of any person or causes damage to any property or business;
- g. Soils in the school have been found to have high concentration of lead and arsenic. Therefore, generated dusts from handling and transportation of soils during demolishing and construction shall be limited to the specific working area and shall not be transported beyond the property boundary, at any time during demolishing and construction; and
- h. All methods applicable to dust control including, but not limited to truck wash-out and other similar methods are applicable and shall be implemented.

C. Public Comments

1. On November 8, 2019, a comment letter was received, providing the following written comments, with staff responses:
- a. "The City Notice, page 1, says a Dust Control Plan will be required. However West Valley School District (WV) Environmental Checklist items A.9 and 10, and their Attachment 1, do not mention a Dust Control Plan. On July 15, 2019, neighbors of Apple Valley School submitted a Dust Prevention Petition to WV, signed by 60 neighborhood residents. A copy of the petition is attached. WV has not yet replied to Item 2 of that petition. It asked WV to provide residents in neighborhoods near the school a written list with names and phone numbers of responsible District and contractor staff who will be available 24/7 so neighbors can call to report dust. We realize that demolition period will be mostly in wet weather, but we would still like WV to respect neighbors' petition request from the beginning of site work. Neighbors want this condition to apply to all work associated with the school replacement, 2019 – 2021. Of [course], the names and phone numbers will change as work proceeds with various contractors. Dust prevention is an important SEPA issue. So can the City make a SEPA condition that WV be required to provide neighbors with a 24/7 phone number and persons, throughout the 2019 – 2021 work period?"



*Staff Response: The Yakima Regional Clean Air Agency regulates dust in the city and has provided comments regarding the requirement for a Dust Control Plan. This MDNS is only for the demolition of the existing school, and therefore does not include requirements for new construction.*

- b. "Environmental checklist item A.11 says existing parking lot pavement will be removed. This pavement and sidewalks were installed in 2012 with DOE (taxpayer) money, and are only 7 years old. We propose to keep as much of the parking lot intact as possible. Pavement could serve as a work vehicle cleaning area, to minimize tracking dirt onto 88th Avenue. Then most of the 2012 paving could be incorporated into the new parking lot so the taxpayers' 2012 investment is not wasted."

*Staff Response: The City will require the applicant to obtain a demolition permit prior to work occurring on the site, but otherwise has no control over the status of the existing parking lot.*

- c. "Attachment 1, item B should mention the existing geotex and topsoil material installed in 2012 to cover most of the school yard area to contain lead and arsenic contaminated subsoils. It is hard to imagine the demolition work will not disturb the topsoil and geotex. The 2012 work was done with taxpayer money, at a cost exceeding \$1,000,000. WV should address preserving the geotex."

*Staff Response: The applicant shall comply with Department of Ecology requirements related to contaminated soil, but the City otherwise has no control over the status of the existing soil.*

- d. "Attachment 1, B.1.e says there will be no fill or excavation as part of the demolition. It is hard to imagine no earthwork during the demolition work, unless existing footings, slabs, playground equipment, chips and buried utilities will not be excavated. If there will be excavation, fill or stockpiling, it should be done in a manner that will contain contaminated soils and prevent dust during work and non-work periods."

*Staff Response: The Demolition Permit required by the City of Yakima includes the removal of subsurface elements such as floors, walls, and utilities and their associated structures.*

- e. "Attachment 1, item B.3.c should discuss protecting the existing storm water intakes and very large drywells from contamination by muddy runoff during construction. The intakes and drywell were constructed as part of the \$1,000,000, 2012 work, mentioned above. They were installed to capture school storm water runoff which previously ran onto 88th Avenue and into Woodwinds West subdivision. These existing storm drainage features should be protected from damage and from contamination so they can continue to be used to capture stormwater runoff."

*Staff Response: This MDNS is only for the demolition of the existing school, and therefore does not include requirements for new construction.*

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- f. "Attachment 1, item B.7. Arsenic and lead contaminated soil should be addressed. See comments [a, c, and d] above."

*Staff Response: The applicant shall comply with Department of Ecology requirements related to contaminated soil.*

- g. "WV has not signed acknowledged any of the submitted SEPA documents. It would seem they should sign."

*Staff Response: The cover sheet of the Environmental Checklist, not included in the Notice of Application, was signed by the West Valley School District.*

## II. CONCLUSIONS:


- A. This Environmental Review is only for the demolition of the existing school.
- B. Environmental Review was required as the demolition exceeded the threshold for building size (more than 12,000 square feet) and the amount of parking (more than 40 spaces).
- C. The proposed new school at this site is being reviewed under a separate application.

## III. REQUIRED MITIGATION MEASURES:

- A. Pursuant to the Washington State Department of Ecology:
  - 1. If the structure or its lead-bearing components are designated as dangerous waste under Chapter 173-303 Washington Administrative Code, all related debris must be managed appropriately and cannot be disposed of as municipal trash;
  - 2. Any mercury-containing lights shall be properly disposed of per 70.275 RCW;
  - 3. As the subject property is listed on the Department of Ecology's Hazardous Site List, site cleanup may be required in the future under the Model Toxics Control Act, and site characterization and/or cleanup may be desirable prior to site alteration or development;
  - 4. Stormwater shall be retained on-site during demolition and any applicable permits shall be obtained; and
- B. Pursuant to the Yakima Regional Clean Air Agency:
  - 1. Prior to demolishing any structures an asbestos survey must be done by a certified asbestos building inspector and any asbestos found must be removed by a licensed asbestos abatement contractor prior to demolition;
  - 2. A Notification of Demolition and Renovation (NODR) application must be filed and approved by YRCAA with the appropriate fees; and
  - 3. Contractors doing demolition, excavation, clearing, construction, or landscaping work must file a Dust Control Plan with YRCAA and get approval, prior to the start of any work.

☒ This MDNS is issued under WAC 197-11-355. There is no further comment period on the MDNS.

Responsible Official: Joan Davenport  
Position/Title: SEPA Responsible Official  
Phone: (509) 575-6183  
Address: 129 N. 2nd Street, Yakima, WA 98901

Date: December 10, 2019 Signature 

☒ You may appeal this determination to: Joan Davenport, AICP, Director of Community Development, at 129 N. 2nd Street, Yakima, WA 98901.

No later than: **December 24, 2019.**

By method: Complete appeal application form and payment of \$580.00 appeal fee.

**You should be prepared to make specific factual objections. Contact the City of Yakima Planning Division to read or ask about the procedures for SEPA appeals.**