

1  
2  
3  
4  
5 BEFORE THE STATE OF WASHINGTON  
6 ENERGY FACILITY SITING EVALUATION COUNCIL

7 In the Matter of the Application of:

8 Scout Clean Energy, LLC, for  
9 Horse Heaven Wind Farm, LLC,  
Applicant.

DOCKET NO. EF-210011

TCC'S REPLY TO OPPOSITION  
OF APPLICANT TO MOTION TO  
DISMISS RE WATER SUPPLY

10  
11  
12 **I. INTRODUCTION.**

13 On July 7, 2023, Intervenor TRI-CITIES C.A.R.E.S. (TCC) filed a motion asking  
14 for dismissal of the pending application because the Applicant Scout Clean Energy  
15 (SCE) has not complied with WAC 463-60-165(3). That regulation requires that SCE  
16 ***“Submit a water use authorization or contractual right to use water supplied by a***  
17 ***municipal corporation or other water purveyor”*** for its project water supply. Though  
18 SCE admits it does not have a “contractual right to use water,” it claims that it need not  
19 comply with this provision and that in fact it has a water supply sufficient to meet the  
20 regulatory requirement. Neither proposition is supported by fact or law and the  
21 application should be dismissed.

22 **II. WATER NEEDS OF PROJECT.**

23 As the Council is aware, SCE's project is on an arid plateau with average annual  
24 rainfall of about 7.7 inches. The proposal is huge, with 244 wind turbines stretching  
25 over 25 miles. Based on the construction, operation and nature of the proposal, there  
26 are three specific requirements for water to support the proposal, discussed below.

1       2.1 Construction Water. The applicant intends to construct 105 miles of new  
2 access roads, resulting in a 50-foot wide disturbed area during construction. Updated  
3 Application for Site Certification Redline (UASCR) page 2-80. In addition to water  
4 needed to mix concrete for structure foundations, *“water trucks will be used to control*  
5 *dust generation in all disturbed areas during construction.”* UASCR, page 2-87.  
6 Construction water alone will require 220,000 gallons per day, with total construction  
7 water demand of 120 million gallons. *Id.*

8       2.2 Operational Water. As the UASCR indicates: “Project operations would  
9 require water for the limited needs of the O&M facilities and for solar panel washing.”  
10 UASCR page 2-87. An estimated 2,025,000 gallons of water would be needed for this  
11 purpose annually over the life of the project, estimated at 35 years. UASCR page 2-84.  
12 The project will cost \$1,727,000,000 in 2021 dollars. UASCR at 2-85.

13       2.3 Fire flows. In addition to wind turbines and solar arrays, the applicant has  
14 requested approval of 300 MW of capacity in two separate battery storage systems to  
15 be located on site. These are referenced in the application as “BESS” and identified at  
16 UASCR page 4-42:

17       Two AC-coupled BESS facilities may be developed for the Project. The BESS  
18 would use a series of self-contained battery banks and would be placed adjacent  
19 to their two respective intermediate Project substations and enclosed within a  
20 separate fence. Each BESS would occupy up to approximately 6 acres.<sup>1</sup>

21       The BESS systems would contain lithium-ion batteries, which the application indicates  
22 would pose a fire risk:

23       Lithium-ion battery storage may pose a risk of fire and explosion due to the  
24 tendency for lithium-ion batteries to overheat (FPRF 2013). If lithium-ion battery  
25 cells are exposed to abnormal heat, electrolyte products can vaporize and be  
26 vented from cells. This vented electrolyte is flammable and may ignite on  
27 contact with an ignition source (FPRF 2016).

28       UASCR at 4-33 to 4-34. Commercial grade utility battery fires, even as small as 10

---

<sup>1</sup> At six acres, each BESS facility would be 510 feet on a side, or two full city blocks.

1 MW, are fast moving and require substantial water for as long as four days, running  
2 continuously, as described in these news articles and video of a Chandler, Arizona  
3 lithium-ion fire: [https://www.fox10phoenix.com/news/lithium-battery-storage-facility-  
4 fire-chandler and](https://www.fox10phoenix.com/news/lithium-battery-storage-facility-fire-chandler-and)  
5 [https://www.azcentral.com/story/money/business/energy/2022/04/2  
6 1/fire-crews-tend-massive-smoldering-battery-chandler-facility/740  
7 5430001/](https://www.azcentral.com/story/money/business/energy/2022/04/21/fire-crews-tend-massive-smoldering-battery-chandler-facility/7405430001/).

8 Later reports show this fire was burning for two weeks:

9 <https://www.youtube.com/watch?v=RLzE1LAqoMQ>.

10 In response to these concerns, the Applicant says that:

11 Proof of water availability is addressed in Section 3.3 of this ASC. Automatic  
12 sprinkler systems would be installed in the Project O&M building and BESS  
13 containers per BCC 3.04.041. The Applicant or the Applicant's licensed  
14 contractor would coordinate with the Benton County Fire Marshal to address  
15 special fire protection provisions under BCC 3.04.046 and BCC 3.04.048 as  
16 required.

17 UASCR at 2-151 (emphasis supplied). The water needs for the "automatic sprinkler  
18 systems" are not identified nor are specifications for the system; no indication is  
19 provided as to the duration of flows for the sprinkler system or other fire flows. Section  
20 3.3, as referenced above, provides that "no public water supply wells are located within  
21 the Project Lease Boundary (Ecology 2020)." UASCR at 3-64. The only source of  
22 water identified is to be trucked in. No source of water for the "automatic sprinkler  
23 system" or fire flows is identified. The BESS proposal has not been reviewed,  
24 approved or even submitted to the local fire district or fire marshal.

### 25 **III. AVAILABLE WATER SUPPLIES.**

26 The only potential water supply cited by SCE is from a letter from the Port of  
27 Walla Walla, found in Appendix J, which is referenced as "Water Source  
28 Documentation." See Attachment 1. However, this source is not only unconfirmed but  
would be only for "construction water for the Project." SCE has not identified a water

1 source for either its operational needs (including “washing the solar panels”) or for  
2 sprinkler systems or other fire protection measures related to the 12 acres of proposed  
3 BESS installations. As indicated, there are no public water supplies in the area.

4 **IV. SCE CANNOT DEFER OR DELAY COMPLIANCE WITH THE REQUIREMENT**  
5 **FOR IDENTIFICATION OF WATER SUPPLY.**

6 The principal defense of SCE to TCC’s motion is to claim it has “substantially  
7 complied with the regulations” and that “any minor deficiencies in the application” don’t  
8 warrant dismissal. Opposition at 16-21.

9 But the uncontested facts do not support a finding of “minor deficiencies”  
10 resulting in “substantial compliance.” To begin with, SCE requests approval of its  
11 BESS installation. But what is it? All we know is that there will be two spreads of  
12 lithium-ion batteries of six acres each. Where are the BESS to be located? Figures  
13 2.3-1 and 2.3-2 at UASCR page 2-19 and 2-20 do not even show where the BESS  
14 facilities will be. There are no plans of any kind for the facilities, not even a primitive  
15 layout or the types of batteries to be installed, other than they will be lithium-ion. While  
16 SCE cites to the Whistling Ridge project, that application was only for wind turbines,  
17 with no battery proposals of any kind.

18 SCE’s real proposal is to (literally) “kick the (water) can down the road.” It wants  
19 approval of its BESS plan without disclosing what will actually be constructed nor how  
20 the public will be protected from the inherent risk of fire from such facilities. The  
21 facilities are very large, with the proposal for two BESS facilities of 150 MW each  
22 covering six acres.

23 Next SCE contends that it has met the requirements to “submit a water use  
24 authorization or contractual right to use water” (WAC 463-60-165(3)) with the letter  
25 from the Port of Walla Walla (see Attachment 1).<sup>2</sup> But even if the letter constitutes a

---

26 <sup>2</sup> As indicated by the follow up June 14, 2023 email from Mr. Reay, the November 22, 2023 letter  
27 cannot be considered a “commitment” of any kind by the Port. See Attachment 2.



1 valid "authorization" (an issue to be discussed below), the authorization only mentions  
2 "construction water for the project." (Emphasis supplied.) But "construction" water is  
3 only one of the three water requirements; there is no authorization or contractual right  
4 for operational water needs or for fire flows and water flows for BESS sprinkler systems  
5 or other fire suppression facilities. This is not "substantial compliance" but rather no  
6 compliance. For those concerned with this project, there is no indication how these  
7 needs will be met or the public health and safety protected.

8 Moreover, there has been plenty of time for this applicant to put together a  
9 complete description of the project and how the substantial water needs for it will be  
10 met. The project application was made in February 2021, two and a half years ago,  
11 providing time to put together project plans and find and contract with water providers,  
12 keeping in mind that this is a \$1.727 Billion project. The continued effort to defer  
13 specification of these critical project elements is clearly an attempt to assure there will  
14 not be public comment and criticism of these issues. Given all that is known about  
15 batteries and the clear and recognized concerns about their dangers, and the lack of  
16 water facilities, this is not a subject to be swept under the rug.

17 SCE is the "Emperor with no clothes." It seeks approval of a project without  
18 specification and without the assurance that water will be available to meet  
19 construction, operation and fire control needs.

20 **V. THE PORT OF WALLA WALLA CANNOT PROVIDE WATER OUTSIDE ITS**  
21 **UGA AND WATER SERVICE AREA.**

22 SCE originally identified the City of Kennewick as the water supplier, but that  
23 source was not available because the project was outside Kennewick's City Urban  
24 Growth Area, or UGA. Even with this understanding, SCE went to the Port of Walla  
25 Walla, which has the same limitation.

26 The Wallula-Dodd Road Water System identified in Appendix J (Attachment 1) is  
27 located within a special industrial UGA created by Walla Walla County for the Port of  
28

1 Walla Walla industrial development. The water system to support the industrial UGA  
2 was permitted by a conditional use permit from Walla Walla County and does not  
3 permit water to be distributed outside the UGA. The Hearing Examiner approval of the  
4 conditional use permits is attached as Attachment 3. A special map was created that  
5 shows the service area for the water system, which was referenced in the conditional  
6 use approval. See Attachment 4. While it may be that the Port has water for hire (as  
7 indicated in Appendix J), it cannot issue a "water supply agreement" for use outside the  
8 special UGA and water service area. Even a minimal investigation would have  
9 disclosed this fatal flaw.

10 Again, there has been abundant time for SCE to investigate and secure a valid  
11 "contractual right to use water" as required by EFSEC regulations.

12 **VI. CONCLUSION.**

13 On this arid site, with no water rights, the question of water supply is critical to  
14 the public interest for any industrial use. The addition of 12 acres of BESS lithium-ion  
15 batteries with a 300 MW capacity, with a defined and admitted history of runaway fires,  
16 makes the need for identified and confirmed water supply essential. The current  
17 application should be dismissed, or processing suspended, until an adequate and  
18 legally available water supply is confirmed as required by EFSEC regulations.

19 DATED this 24<sup>th</sup> day of July, 2023.

20  
21 /s/  
22 J. Richard Aramburu, WSBA #466  
23 Attorney for Tri-Cities C.A.R.E.S.  
24  
25  
26  
27  
28

DECLARATION OF SERVICE

I hereby certify that I have this day served the foregoing Notice of Deposition upon all parties of record in this proceeding (listed below my signature block) by authorized method of service pursuant to WAC 463-30-120(3) to the email addresses for parties as provided.

Dated at Seattle, Washington this 24<sup>th</sup> day of July, 2023.

/s/  
Carol Cohoe, Legal Assistant  
Law Offices of J. Richard Aramburu, PLLC

PARTIES OF RECORD

Kenneth Harper, Aziza Foster  
Menke Jackson Beyer, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima WA 98902  
*By Email:* kharper@mjbe.com;  
zfoster@mjbe.com; Julie@mjbe.com

emily.schimelpfenig@stoel.com;  
ariel.stavitsky@stoel.com

Shona Voelckers  
Yakama Nation  
shona@yakamanation-olc.org  
ethan@yakamanation-olc.org  
jessica@yakamanation-olc.org

Ryan Brown  
Chief Deputy Prosecuting Attorney  
Benton County Prosecuting Attorney  
7211 West Okanogan Place, Building A  
Kennewick, WA 99336  
Counsel for Benton County  
*By Email:*  
Ryan.Brown@co.benton.wa.us

EFSEC Staff  
lisa.masengale@efsec.wa.gov;  
alex.shiley@efsec.wa.gov;  
andrea.grantham@efsec.wa.gov;  
sonia.bumpus@efsec.wa.gov

Sarah Reyneveld  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
Counsel for the Environment  
*By Email:*  
Sarah.Reyneveld@atg.wa.gov  
CEPSeaEF@atg.wa.gov;  
julie.dolloff@atg.wa.gov

Tim McMahan  
Stoel Rives LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
Counsel for Scout Clean Energy, LLC  
*By Email:* tim.mcmahan@stoel.com

TCC Reply Opp  
Motion Dism  
ATTACHMENT 1

## **APPENDIX J: WATER SOURCE DOCUMENTATION**



November 16, 2022

**Via E-Mail**

**Mr. Dan Haller**

**Aspect Consulting LLC**

**<dhaller@aspectconsulting.com>**

**RE: Availability of Water for Hire for Wind Project at the Port's Wallula-Dodd Road Water System**

Dear Dan:

This letter responds to your inquiry, on behalf of the Horse Heaven Hills Wind Project (Project), as to whether the Port of Walla Walla can supply construction water for the Project. We understand that Project construction is planned to commence in Q4 of 2023, to last approximately 90 weeks, and to conclude by the end of 2025. The Project requests to fill up to 40 water trucks per day at a peak flow rate of 150 gallons per minute and up to an annual quantity of 185 acrefeet.

The Port has water supply available for hire at the Wallula-Dodd Road Water System for the quantities and on the schedule requested by the Project. However, the Wallula-Dodd Road Water System lacks facilities for high-volume truck filling and improvements would be necessary. Accordingly, availability of water supply for Project construction is subject to the following conditions:

- Entry into a water supply agreement;
- Funding contribution for installation of fill station and related equipment; and
- Rates and charges in effect at the time, subject to increase by action of the Port Commission.

If you have any questions or need any additional information, please do not hesitate to call, or email me.

Sincerely,

Patrick H. Reay, Executive Director  
Port of Walla Walla  
310 A. Street, Walla Walla, WA 99362  
Phone: 509-525-3100 Ext. 104  
Cell: 509-520-8304  
[pr@portwallawalla.com](mailto:pr@portwallawalla.com)  
[www.portwallawalla.com](http://www.portwallawalla.com)

**From:** Patrick Reay <[pr@portwallawalla.com](mailto:pr@portwallawalla.com)>

**Date:** June 14, 2023 at 10:49:49 AM PDT

**To:** "Boehnke, Sen. Matt" <[Matt.Boehnke@leg.wa.gov](mailto:Matt.Boehnke@leg.wa.gov)>, Barry Bush <[atomicbt@charter.net](mailto:atomicbt@charter.net)>

**Cc:** "Dye, Rep. Mary" <[Mary.Dye@leg.wa.gov](mailto:Mary.Dye@leg.wa.gov)>, "Klicker, Rep. Mark"

<[Mark.Klicker@leg.wa.gov](mailto:Mark.Klicker@leg.wa.gov)>, "Rude, Rep. Skyler" <[Skyler.Rude@leg.wa.gov](mailto:Skyler.Rude@leg.wa.gov)>, "Dozier, Sen.

Perry" <[Perry.Dozier@leg.wa.gov](mailto:Perry.Dozier@leg.wa.gov)>, Paul Gerola <[pg@portwallawalla.com](mailto:pg@portwallawalla.com)>, Judy

<[Goosie1515@aol.com](mailto:Goosie1515@aol.com)>, [Bill.McKay@ci.kennewick.wa.us](mailto:Bill.McKay@ci.kennewick.wa.us), Will McKay

<[Will.McKay@co.benton.wa.us](mailto:Will.McKay@co.benton.wa.us)>, Meagan Blair <[mb@portwallawalla.com](mailto:mb@portwallawalla.com)>

**Subject: RE: Port of Walla Walla/HHH Wind Project**

Good morning all-

The Port of Walla Walla was approached by the project proponent engineering firm, Aspect Consulting, LLC late last year regarding the ability to provide construction only water.

Attached is the letter that was submitted to the consulting engineer regarding the availability of water for construction purposes only.

The letter was provided as a response to inquiry regarding our Wallula Dodd Water Systems capability to deliver the construction water requested. As you can see from the conditions identified in the letter dated November 16, 2022, the following excerpt from the letter governs the action of providing water to this project or any project that makes a request from the Port of Walla Walla. I would point out that the Port Commissioners have **NOT** been presented with anything that would be of consideration to establish the water supply agreement, which would take Commission action.

*Accordingly, availability of water supply for Project construction is subject to the following conditions:*

- 1. Entry into a water supply agreement;*
- 2. Funding contribution for installation of fill station and related equipment; and*
- 3. Rates and charges in effect at the time, subject to increase by action of the Port Commission.*

At this point in the process, the community is **not** supportive of the project, therefore, we would **not** enter into a water supply agreement unless the Port Commissioners directed me to do so.

Respectfully,

Patrick H. Reay

Executive Director

Port of Walla Walla

310 A. Street

Walla Walla, WA 99362

509-525-3100 Ext. 102 Work

509-525-3101 Fax

[pr@portwallawalla.com](mailto:pr@portwallawalla.com)

[www.portwallawalla.com](http://www.portwallawalla.com)

Before Hearing Examiner  
Gary N. McLean

**BEFORE THE HEARING EXAMINER  
FOR WALLA WALLA COUNTY**

Application for a Conditional Use Permit  
submitted by

**THE PORT OF WALLA WALLA,**  
Applicant

*(Project: Expansion and improvements to Dodd Road  
Industrial Park water system to areas within the  
Attalia Industrial UGA and the Wallula Gap Business  
Park, in the Western portion of Walla Walla County,  
upland/east of the Columbia River).*

**File No. CUP 18-005**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION APPROVING  
CONDITIONAL USE PERMIT**

**I. SUMMARY OF DECISION.**

The requested Conditional Use Permit, for authorization to expand and improve the Port of Walla Walla's Dodd Road Industrial Park Water System, a Group A water system regulated by the Washington Department of Health (among other agencies), to areas within the Attalia Industrial UGA and the Wallula Gap Business Park, meets applicable County development regulations and policies for such facilities and is therefore approved, subject to conditions.

**II. BACKGROUND and RELEVANT CODE PROVISIONS.**

On or about June 4, 2018, the applicant, Port of Walla Walla, submitted a conditional use permit application for expansion and improvements to the Dodd Road

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION – APPROVING CONDITIONAL USE  
PERMIT FOR THE PORT OF WALLA WALLA  
WATER SYSTEM EXPANSION AND  
IMPROVEMENTS – FILE NO. CUP18-005**

**WALLA WALLA COUNTY HEARING EXAMINER**  
310 W. POPLAR STREET, SUITE 200  
WALLA WALLA, WASHINGTON 99362

1 Industrial Park water system to areas within the Attalia Industrial UGA and the Wallula  
2 Gap business park, as/when separate service agreements can be reached with benefited  
3 property owners.

4 This conditional use permit application was assigned File No. CUP18-005 by  
5 County staff. The project site is generally located within the Attalia Industrial Urban  
6 Growth Area, in the westernmost part of Walla Walla County, upland from the Columbia  
7 River, on multiple tax parcels, as numbered and described in the Record. (See *Exhibit 2,*  
8 *Application materials, sub-Ex. C, spreadsheet showing Legal Description of Properties*  
9 *within the Attalia Industrial Urban Growth Area Containing Components of the Proposed*  
10 *Port of Walla Walla Water System*).

11 ***Basis for Conditional Use Permit Requirement.***

12 WWCC 17.16.014 provides that “Utility Facilities” are classified as a conditional  
13 use in all County-zoning districts. The term, “Utility Facilities” is defined at WWCC  
14 17.08.504, and includes “facilities for the distribution or transmission of services to an area;  
15 including, but not limited to: telephone exchanges, water or sewage pumping or treatment  
16 stations, electrical substations, and water storage reservoirs or tanks.” Accordingly, a  
17 Conditional Use Permit is required for the applicant’s proposed water system expansion and  
18 improvements, which would distribute water services to the benefited area. There is no  
19 dispute on the need for the requested conditional use permit.

20 ***Criteria for Approval of a Conditional Use Permit.***

21 The criteria for approval of a conditional use permit are found at WWCC 17.40.020.

22 ***Jurisdiction of Hearing Examiner:***

23 The County Code vests the Hearing Examiner with authority to hear and issue  
24 decisions on applications for Conditional Use Permits. See *WWCC 2.50.070(A)(3);*  
25 *14.09.020(C), and 14.09.025, Table 14-1.*

26 **III. RECORD.**

All exhibits entered into evidence as part of the record, and an audio recording of  
the public hearing, are maintained by the County, and may be examined or reviewed by  
contacting the County’s public records officer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION – APPROVING CONDITIONAL USE  
PERMIT FOR THE PORT OF WALLA WALLA  
WATER SYSTEM EXPANSION AND  
IMPROVEMENTS – FILE NO. CUP18-005

Page 2 of 12

WALLA WALLA COUNTY HEARING EXAMINER  
310 W. POPLAR STREET, SUITE 200  
WALLA WALLA, WASHINGTON 99362



***Exhibits entered into evidence by the Examiner:***

*Exhibit 1 – Staff Report – Walla Walla County Community Development Department Report and Recommendation of Approval to the Hearing Examiner for the Port of Walla Walla Conditional Use Permit application, dated September 5, 2018, prepared by Principal Planner, Lauren Prentice (six pages), along with the following Exhibits);*

*Exhibit 2 – Conditional Use Permit (CUP18-005) application dated and 6/4/2018 with attached sub-exhibits, A, B-1 and B-2 (revised on 8/20/2018);*

*Exhibit 3 – Wallula Gap Business Park Wetland Determination dated 6/5/2017;*

*Exhibit 4 – Cultural Resource Inventory dated 6/30/2017;*

*Exhibit 5 – SEPA Checklist (SEPA18-012) dated 5/29/2018;*

*Exhibit 6 – SEPA Staff Evaluation Report dated 8/24/2018;*

*Exhibit 7 – Letter from Department of Ecology Eastern Regional Office dated 7/27/2018;*

*Exhibit 8 – Letter from Paul Gonseth, DOT Planning Engineer, dated 7/27/2018;*

*Exhibit 9 – Letter from Gretchen Kaehler with Department of Archaeology and Historic Preservation (DAHP) dated 7/30/2018;*

*Exhibit 10 – Notice of Application (ODNS) and publishing, posting, and mailing affidavits;*

*Exhibit 11 – SEPA Final Determination of Non-Significance issued 8/24/2018;*

*Exhibit 12 – Notice of Public Hearing and publishing, posting, and mailing affidavits.*

***Testimony:*** The following persons provided testimony under oath as part of the record during the open-record hearing held on September 10, 2018:

1. Lauren Prentice, Principal Planner and primary Staff Contact for the pending application, for Walla Walla County;
2. Patrick Reay, Executive Director, Port of Walla Walla, for the applicant;
3. John Wells, P.E., with Anderson Perry & Associates, the applicant's engineering consultant-firm and project representative; and
4. Mr. Lybert, from Pasco, posed questions regarding timing of project, whether scope would reach up to NE part of Port area, to a triangle-portion of land.

***Site Visit:*** After the hearing, the Examiner visited the Port's industrial/business parks

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
DECISION – APPROVING CONDITIONAL USE  
PERMIT FOR THE PORT OF WALLA WALLA  
WATER SYSTEM EXPANSION AND  
IMPROVEMENTS – FILE NO. CUP18-005**

**WALLA WALLA COUNTY HEARING EXAMINER**  
310 W. POPLAR STREET, SUITE 200  
WALLA WALLA, WASHINGTON 99362

where the project is proposed and drove through the affected area, visiting potentially-benefitted parcels, without communicating or making contact with anyone in the area.

#### IV. FINDINGS OF FACT.

Based on the record, and following consideration of all the evidence, testimony, codes, policies, regulations, and other information included therein, the undersigned issues the following findings of fact:

1. All statements of fact included in previous or following sections of this Decision, including without limitation those included in the Background summary, that are deemed to be findings of fact are incorporated by reference into this section as findings of fact issued by the Hearing Examiner.

2. On or about June 4, 2018, the County received the pending Conditional Use Permit application that would authorize the applicant, Port of Walla Walla, to expand and improve its existing water system. (*Ex. 1, Staff Report; Ex. 2, application materials*).

##### ***Project Description – Proposed Conditional Use***

3. According to the applicant's project description provided as part of the permit application (*Exhibit 2, page 3, Response to item 1*), the proposed conditional use "consists of system improvements to expand the [Port's] existing Dodd Road Industrial Park water system. These improvements include a deep basalt well, four 5 MG storage tanks, a pumphouse with water treatment equipment, and water supply and distribution lines to serve new and existing businesses within the Dodd Road Industrial park and the nearby Wallula Gap Business Park with safe, potable water for human use, fire-fighting capability, and industrial applications." The applicant explains that these improvements reflect the recommended design for the water system as contained in the Port's Water System Plan adopted in 2013, and that all improvements are [and must be] designed and engineered to industry standards and federal, state, and local regulations to ensure public health and safety. *Id.* Elsewhere in the application materials, the Port notes that "[o]ver time, existing shallow alluvium wells within the Wallula Gap Business Park will be connected to mix with the water system to provide additional capacity to meet supply demands." *Ex. 2, page 2, 3<sup>rd</sup> paragraph, last sentence.* Most of the new water lines will be located within proposed roadways or existing rights-of-way described in the application materials. *Ex. 2, page 1, last paragraph.* Approximately 21,000 feet of new roadway will be constructed as part of the project, as water system improvements progress, and within which many of the new water lines will be placed. *Staff Report, page 1, Summary of Proposal.*

4. To ensure there is no confusion as to what *is not covered* by this permit, it is expressly limited to water system improvements and associated facilities, excluding any

1 wastewater system facilities. The Port's application materials explain that: *"A separate*  
2 *Conditional Use Permit Application to develop a wastewater system to serve the industrial*  
3 *and business park areas is expected to be submitted in the near future, once preliminary*  
4 *design plans have been completed."* Ex. 2, page 1, final sentence of last paragraph.

### 5 ***Conditional Use Permit required for Utility Facilities***

6 5. As noted above, WWCC 17.16.014 provides that "Utility Facilities" are classified as  
7 a conditional use in all County-zoning districts. The term "Utility Facilities" is defined at  
8 WWCC 17.08.504, and includes "facilities for the distribution or transmission of services to  
9 an area; including, but not limited to: telephone exchanges, water or sewage pumping or  
10 treatment stations, electrical substations, and water storage reservoirs or tanks."  
11 Accordingly, a Conditional Use Permit is required for the applicant's proposed water  
12 system expansion and improvements, which would extend and distribute water services to  
13 the benefited area. There is no dispute on the need for the requested conditional use permit.

14 6. Staff reviewed the application materials and deemed the application complete,  
15 resulting in the County's formal Notice of Application. *Exhibit 10*. Ms. Prentice confirmed  
16 that proper public notice(s) regarding the pending CUP application was/were published,  
17 posted and mailed in accord with applicable County requirements. *Testimony of Ms.*  
18 *Prentice; Exhibit 10*.

19 7. As noted above, the Hearing Examiner is delegated specific authority to hear,  
20 consider, and decide on applications for conditional use permits. See *WWCC*  
21 *2.50.070(A)(3); 14.09.020(C), and 14.09.025, Table 14-1*.

22 8. In accord with applicable county project review regulations, Ms. Prentice, the  
23 County's designated Staff Contact for this matter, reviewed the application materials, and  
24 generated a Staff Report, which was transmitted to the Examiner in the week prior to the  
25 public hearing.

26 9. The open-record public hearing for the conditional use permit was duly noticed in  
accord with law. *Exhibit 12*. The hearing occurred on Monday, September 10, 2018, in the  
County's designated hearing room. At the hearing, the undersigned Examiner presided,  
with county staff and applicant representatives in attendance. Throughout the hearing, no  
one from the general public spoke in opposition or challenged the pending application or  
the staff's recommendation of approval. The only public comment focused on a private  
land-owner's interests in timing and the scope of the project.

10. At the public hearing, Ms. Prentice confirmed that all county notice and comment  
procedures were satisfied. No government agencies submitted any comments in opposition  
to or questioning the pending applications. *Testimony of Ms. Prentice*. Applicant witnesses

1 appeared at the hearing and fully supported the Staff Report and its recommendation of  
2 approval and proposed conditions, without objection to any portion thereof. *Testimony of*  
3 *Mr. Reay and Mr. Well.* Ms. Prentice and the applicant representatives, Mr. Reay and Mr.  
4 Well, each offered credible testimony and responses to questions from the Examiner, all of  
which support the requested permit application. Comments from state archeological and  
transportation officials were reviewed by County staff, and conditions of approval have  
been included to incorporate recommendations from same.

### 5 ***Property Information***

6 11. The County-designated “Attalia Industrial Urban Growth Area (UGA)” is located in  
7 the westernmost part of Walla Walla County, adjacent to the Columbia River which forms  
8 part of its western border. The Port’s application materials explain that the entire Attalia  
9 Industrial UGA contains approximately 9.5 square miles, or approximately 6,000 acres.  
10 The Columbia River is adjacent to the western edge of the Attalia Industrial UGA while  
11 areas to the north, east, and south are zoned Primary Agriculture-40 (PA-40) extending for  
12 approximately 1 mile in each direction. The Wallula Gap Business Park and the Dodd  
13 Road Industrial Park both lie within the Attalia Industrial UGA, with a combined size of  
14 approximately 2,130 acres. *Ex. 2, application materials, page 2, Description of Proposed*  
15 *Use, Subject Property, and Surrounding Area.* The Staff Report clarifies that a portion of  
16 the Wallula Gap Business Park extends south of the UGA, where five Port wells are shown  
17 on the application materials (Ex. 2, sub-ex’s B-1 and B-2). None of the water system or  
18 roadway improvements will occur in this area, which is outside of the UGA and zoned  
19 Primary Agriculture-40, provided, however, that the wells may be connected to the Dodd  
20 Road Water System in the future, if additional water supply is needed. *Staff Report, page 2.*  
21 Similarly, no water system or roadway improvements were described in the application  
materials, the applicant’s SEPA checklist or on the proposed project plans, for any portions  
of the Dodd Road Water Service Area that extend outside the UGA boundary.  
Accordingly, the scope of this permit does not authorize any water system improvements in  
portions of the Dodd Road Water Service Area that are located outside the UGA boundary,  
except for connections to existing wells outside the UGA if additional water supply is  
needed to serve the water system.

22 12. The Port’s application notes that, for the purpose of this Application, the areas  
23 where the water system and road improvements are proposed are considered the “project  
24 area”. *Id., page 2, 2<sup>nd</sup> paragraph.*

25 13. The Port represents that its water rights extend to the boundaries of the Attalia  
26 Industrial UGA, which legally allows the Port to provide water service to other properties  
within the Attalia Industrial UGA not owned by the Port, if the Port determines it has  
adequate capacity at the time and special service agreements can be negotiated. *Id.* Staff  
recommended a condition of approval that would require the Port to demonstrate that it has

1 acquired necessary rights before system improvements, i.e. water lines and the like, are  
2 constructed on any given parcel. (Proposed Condition no. 11).

3 14. The Staff Report summarizes how the proposed water system expansion and  
4 improvements are not expected to have any adverse impacts on the natural environment.  
5 One wetland in the general project area will not be impacted by any proposed project  
6 improvements. The wellhead protection areas in the project area boundaries, also called  
7 critical aquifer recharge areas (CARA), and the few slopes that qualify as erosion hazard  
8 areas (slopes over 15%), are not expected to be impacted, or can be mitigated by County  
9 development regulations including its Critical Areas Ordinance, codified at WWCC Chapter  
10 18.08. *Staff Report, page 2.*

### 11 ***SEPA***

12 15. On July 16, 2018, a Notice of Application (*Exhibit 10*) was issued for the project via  
13 the optional SEPA Determination of Non-Significance (ODNS) process with a 14-day  
14 comment period. On August 24, 2018, a final SEPA Determination of Non-Significance  
15 (*Exhibit 11*) was issued by the Director of the Walla Walla County Community  
16 Development Department, the County's SEPA Responsible Official, with no additional  
17 comment period. A summary of the SEPA analysis conducted for the proposal is included  
18 in *Exhibit 6*, a SEPA Staff Evaluation Report dated August 24, 2018. No one indicated  
19 they opposed the DNS, and no one commented in a timely manner on any substantive or  
20 procedural issues that would give them standing to appeal such threshold determination.

### 21 ***Comprehensive Plan***

22 16. The Staff Report and exhibits included in the record constitute substantial evidence  
23 that demonstrates how the pending application is consistent with the County's  
24 Comprehensive Plan, including without limitation policies/goals found in the Utilities  
25 Element, like Goal UT 1, Policy UT-2, and Policy UT-4. *Staff Report, page 4.*

### 26 ***As Conditioned, the pending application satisfies the approval criteria for a Conditional Use Permit.***

17 17. Based on evidence in the record, the Examiner finds and concludes that, as  
18 conditioned, the proposed Port of Walla Walla project satisfies all of the approval criteria  
19 for a Conditional Use Permit set forth in WWCC 17.40.020(A – F). Findings regarding  
20 each of the specific criteria are provided below, in italics:

21 A. That the use will not endanger the public health or safety;

22 *The proposal will have to meet all applicable health, access, stormwater,*

1 building and fire codes. The Walla Walla County Public Works and  
2 Environmental Health Departments, as well as the County Fire  
3 Marshal/Building Official, all received copies of the application materials,  
4 with a request for comments. None of these officials or agencies submitted  
5 any comments or questions or noted issues that would serve as a basis to  
6 deny the pending application. The project will provide potable water and  
7 flow for fire-fighting to existing and new businesses, which will support  
8 public health and safety.

9  
10 B. That the use will not generate significant nuisance conditions such as noise,  
11 dust, glare, vibration;

12 *If constructed in compliance with applicable conditions, building codes, and*  
13 *development regulations, the project will not generate significant nuisance*  
14 *conditions. After construction, the water system is not expected to generate*  
15 *any noise, dust, glare or vibration. As noted in the application materials,*  
16 *the project may include some exterior lighting, but the applicant has stated*  
17 *that they will shield any lighting they do install. A condition of approval is*  
18 *included to prevent or mitigate lighting impacts.*

19 C. That the use meets all required conditions and standards set forth in the  
20 district where it proposes to locate;

21 *The proposed use is subject to applicable building and zoning regulations.*  
22 *Title 17 does not have any development standards that apply to this project.*  
23 *There are no setback requirements and no landscaping requirements.*  
24 *Portions of the project are located near geologically hazardous areas and*  
25 *critical aquifer recharge areas, regulated under Chapter 18.08, Critical*  
26 *Area Protection. The applicant will have to comply with applicable*  
*conditions of WWCC Chapter 18.08.*

D. That the location and character of the use is compatible and consistent with the  
character of the area in which it is to be located;

*The applicant represents that the proposal is consistent and in character*  
*with the surrounding agricultural and industrial area because it will be*  
*similar to many municipal water systems, consisting of a well, a pumphouse,*  
*storage tanks, and water lines.*

E. That the use is in conformance with the Comprehensive Plan; and

*See Finding No. 16, above; and Comp. Plan Utilities Element, Goal UT-1,*



Policy UT-2, Policy UT-4, and Policy ED-11.

F. That the use will be supported by adequate public facilities or services.

*The project involves the expansion and improvements to an existing water system; the system will rely upon existing electricity service already available in the area to run the new pump, backup generator, and water treatment equipment. Some existing public roadways and/or rights-of-way will be where some power and water lines are extended, underground throughout the Park. (Ex. 2, application materials, page 2, item 6).*

18. No one submitted any comments or questions that would rebut or challenge the Staff Report's recommendation of approval, subject to conditions.

19. Except as modified in this Decision, all Findings, and statements of fact contained in the Staff Report, are incorporated herein by reference as Findings of the undersigned hearing examiner.

20. As summarized above in previous findings, and in the un rebutted, credible Staff Report, the record contains substantial evidence to demonstrate that the pending application meets all of the required criteria for approval, including without limitation those found in WWCC 17.40.020(Conditional Use Criteria). (See Staff Report, particularly page 5).

## V. CONCLUSIONS OF LAW.

1. As explained above, the Record, particularly the County Staff's recommendation of approval, includes substantial evidence that the pending permit application satisfies all applicable decision criteria specified in the County's code.

2. WWCC 17.40.020 mandates that a conditional use shall be approved or approved with conditions if the application meets the approval criteria set forth in WWCC 17.40.020(A) through (F). As explained in the Findings of Fact, including without limitation Finding No. 17, the applicant has satisfied its burden of proof, to demonstrate that its proposal complies with, or can be conditioned to comply with, all applicable approval criteria.

3. Any finding or other statement contained in this Decision that is deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

## VI. DECISION.

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the contents of the record, and the examiner's site visit, the undersigned Examiner APPROVES the Conditional Use Permit, for the Port of Walla Walla water system expansion and improvements, all as described and depicted in the application materials and plans included in the Record as *Exhibit 2*, subject to the following 12 (twelve) Conditions of Approval:

### CONDITIONS OF APPROVAL

1. Consistent with WWCC 17.40.025, the action for which the conditional use permit (CUP) is required shall commence within one year of approval unless extended for up to one year by the Director. Failure to proceed with the approved use within such timeframe shall void approval of the conditional use;

2. Before construction, the applicant must first obtain any right-of-way use or other associated permit(s), license, easement, or approval required by the County, the Department of Natural Resources, Department of Archaeology & Historic Preservation, or any other government agency or regulatory authority with jurisdiction over a particular aspect of the project. Any conditions of approval or requirements imposed as part of such permits or approvals shall be and are hereby incorporated as Conditions of Approval for this CUP;

3. Pursuant to Walla Walla County Code Section 14.13.110, at any time during the life of the permit, the Walla Walla County Community Development Department Director may ask the Hearing Examiner to revoke the permit if the project is not in compliance with any of the conditions of approval and/or required permits;

4. Future changes to the Dodd Road Industrial Park Water System facilities, operations, plans, or additions, beyond those identified and described in the application materials (*Ex. 2*) and analyzed as part of the SEPA review conducted by the County for this application, will require an amendment to the CUP issued herein, which shall be processed as a Type 3 quasi-judicial review before the County's hearing examiner, consistent with applicable county codes and requirements for a new conditional use permit, as currently written or as may be subsequently amended by the Walla Walla County Board of County Commissioners and in effect as of the date of filing a complete application for an amendment to the CUP issued herein. (*See* WWCC 14.03.050 and Ch. 14.09 WWCC). For example, and without limitation, an amendment would be required to add additional storage tanks, to drill additional wells, to construct new roads and add water distribution lines running to areas not identified in the application materials, provided, however, that private water service connection lines running from the Port's water system lines described in the application materials and authorized under this permit shall not require any amendment to this CUP unless the Director determines that such connection-project requires further SEPA review.

5. Exterior lighting shall be directed and shielded in a manner which minimizes its visibility at the site's boundaries. Exterior lighting shall not be used in such a manner that it produces glare on public streets and neighboring residential properties. Any temporary construction



1 or maintenance lighting associated with part of the project shall comply with these standards  
2 and shall be removed within a timeframe specified by the Director.

3 6. The applicant must comply with applicable Department of Archaeology and Historic  
4 Preservation (DAHP) requirements, as described in the July 30, 2018 letter from Gretchen  
5 Kaehler. (Ex. 9).

6 7. The applicant must comply with applicable Department of Transportation (DOT)  
7 requirements, as described in the July 27, 2018 letter from Paul Gonseth. (Ex. 8).

8 8. The applicant must comply with applicable Walla Walla County Public Works  
9 requirements for any improvements located within County/public rights-of-way.

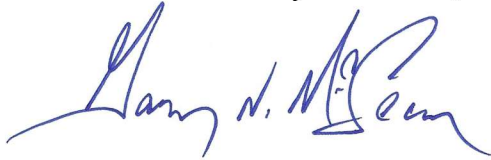
10 9. The applicant must comply with applicable County and State stormwater management  
11 regulations.

12 10. The applicant must comply with all requirements of WWCC Chapter 18.08, Critical  
13 Area Protection, for any portion of the project within a critical area or a critical area buffer.

14 11. The Applicant shall provide to the Community Development Department's satisfaction  
15 evidence that it has secured property rights to lands underlying the proposed line prior to  
16 construction on any given parcel.

17 12. This Conditional Use Permit authorizes the development and construction of water  
18 system facilities within the project area described in the application materials.

19 ISSUED this 9<sup>th</sup> Day of October, 2018

20 

21 Gary N. McLean  
22 Hearing Examiner

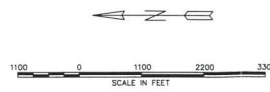
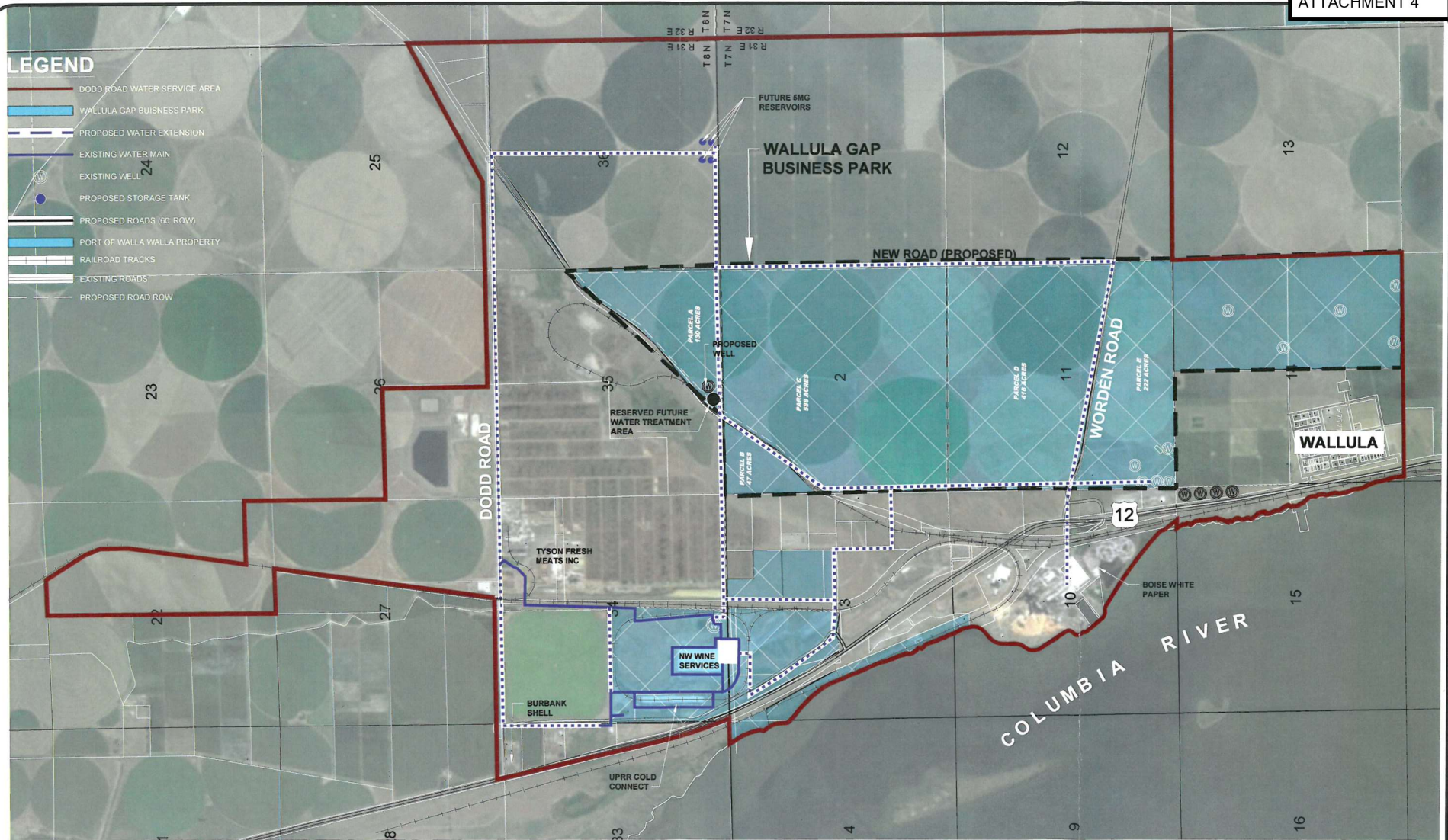
1 **FINALITY OF DECISION AND NOTICE OF RIGHTS OF APPEAL**

2 As provided in WWCC 2.50.070(B), *the decision of the hearing examiner on all matters is final and*  
3 *conclusive, unless appealed pursuant to Chapter 14.11 of the Walla Walla County Code.*

4 WWCC 2.50.120, captioned "Reconsideration", provides that: *An applicant or party of record to a*  
5 *hearing examiner's public hearing may seek reconsideration only of a final decision by filing a written*  
6 *request for reconsideration with the community development director within ten days of the final decision.*  
7 *The request shall comply with Section 14.11.030 of this code. The hearing examiner shall consider the*  
8 *request at the next regularly scheduled meeting, without public comment or argument by the party filing the*  
9 *request. If the request is denied, the previous action shall become final as of the date of the decision on the*  
10 *request for reconsideration. If the request is granted, the hearing examiner may immediately revise and*  
11 *reissue its decision or may call for argument in accordance with the procedures for closed record appeals.*  
12 *Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue*  
13 *has been overlooked that would change the previous decision.*

14 Finally, WWCC 2.50.130 addresses appeals of a hearing examiner decision, and reads as follows:  
15 *The final decision by the hearing examiner on any matter within his or her jurisdiction may be appealed in*  
16 *accordance with Chapter 14.11 of the Walla Walla County Code.*

17 ***NOTE:*** *The Notice provided on this page is only a short summary, and is not a complete*  
18 *explanation of fees, deadlines, and other filing requirements applicable to appeals.*  
19 *Individuals should confer with advisors of their choosing and review all relevant codes,*  
20 *including without limitation the code provision referenced above and state law, particularly*  
21 *the Land Use Petition Act (Chapter 36.70C RCW), for additional information and details*  
22 *that may apply.*



**anderson  
perry  
& associates, inc.**

**PORT OF WALLA WALLA**  
CONDITIONAL USE PERMIT  
DODD RD / WALLULA GAP BUSINESS PARK /  
ATTALIA INDUSTRIAL URBAN GROWTH AREA  
**WATER SERVICE SITE PLAN**

EXHIBIT  
**B-1**