REMARKS TO THE PUD PUBLIC MEETING 4/21/26 9am
Kittitas PUD #1 Proposed Headquarters Relocation SE-26-00003

George Thomas, adjacent landowner, active farmer, and commenter SE-26-00003

Commissioners, thank you for the opportunity to speak directly. I had one week to review your application. In that week, I found enough to tell you with respect that the site you have selected is the wrong site, and the record you have built cannot legally support it. Let me be specific.

First, the farming misrepresentation and the easement your plan unlawfully narrows.

Your SEPA checklist at Section B.8.b describes this parcel as a "former hay field." That is false. This field is actively cut, baled, and sold by a working farmer. And the hay that comes off this ground is not the premium export product the Kittitas Valley ships to Japan. It is the lower-grade mixed hay that feeds the fixed-income retiree with one horse, the 4-H family raising a single steer, and the small-acreage livestock owners across this county who cannot afford premium dairy-quality feed. When this field is paved, those households do not find a substitute. They sell their animals. Washington's Right to Farm Act, RCW 7.48.305, and the Supreme Court's decision in *Buchanan v. Simplot Feeders Ltd.*, 134 Wn.2d 673 (1998), protect that established operation. The Growth Management Act at RCW 36.70A.177(1) expressly directs nonagricultural uses onto lands with poor soils. This is USDA-designated Prime Farmland if Irrigated. It is the opposite of what the statute commands.

Now let me turn to the easement, because this is where your public statements and the recorded instrument diverge most sharply. On June 20, 2024, under Kittitas County Auditor Recording Number 202406200021, your predecessor in title Zerobrane Holdings Kittitas LLC granted a thirty-foot non-exclusive access easement across the parcel you now own. That easement benefits the adjoining farm property, my property. It runs with the land. It binds the PUD as successor.

This easement contains an express restrictions clause that, by its plain terms, prohibits the servient estate meaning you, the PUD, from using the easement area for long-term parking, for storage, for staging of construction, or for any other use that would unreasonably interfere with its intended purpose. Your site plan does all four.

Your own drawings narrow the recorded thirty-foot easement to a twenty-five-foot paved strip. That is a seventeen percent reduction in a recorded width, accomplished without my consent, without a recorded amendment, and without consideration.

The scope of an easement is controlled by the recorded instrument, not by the servient estate's later design preferences. *Thompson v. Smith*, 59 Wn.2d 397, 408–09 (1962). Narrowing a recorded width is not a design choice. It is a unilateral encroachment on a property right I hold and one that the PUD, as successor, is contractually and legally obligated to respect.

Your plan then installs a rigid perimeter fence along the easement corridor, replacing open agricultural access with a hard industrial edge. It introduces a sharp turn at the northeast corner of your parcel a geometry my oversized farm equipment cannot navigate. And in place of the clear passage the instrument guarantees me, it routes my access directly into a drainage ditch. That ditch originates along Ferguson Road, runs north-south, turns east, turns south, and parallels the entire length of your parcel. It overflowed this past winter.

Your site plan is asking me to drive a tractor, all future auto traffic and utilities through it. The Washington Supreme Court in *Sunnyside Valley Irrigation District v. Dickie*, 149 Wn.2d 873, 880 (2003), held that a servient estate may not unreasonably interfere with the dominant estate's enjoyment of an easement. The Court of Appeals in *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178, 184 (2017), held that actions that make an easement materially more difficult to use are prohibited unless justified by the needs of the servient estate.

Nothing on this site plan justifies a narrowing, a rigid fence, a sharp turn, or a forced diversion into an overflowing ditch. All four are textbook unreasonable interference. And because the dominant estate holds the controlling property right not the servient estate the decisions about runoff management, access geometry, and any construction activity that touches the easement corridor are mine to approve. Not yours to impose.

There is a secondary fact about that ditch your letter does not acknowledge. A watercourse that overtopped within the last twelve months is a documented flood risk for the PUD parcel itself. You rejected Dolarway Road because it sat in a floodplain. You are now proposing to build your headquarters adjacent to a drainage feature that floods, over soils the USDA maps on a flood plain landform, with a seasonal water table at twelve to nineteen inches. The floodplain rationale

you used to eliminate Dolarway applies with equal force arguably greater force to the site you chose instead.

One final point on the legal architecture the PUD is walking into. The recorded easement contains an attorney's fees clause. The prevailing party in any action to enforce or construe its terms recovers costs and fees against the non-prevailing party. When the PUD narrows a recorded width, installs fencing and geometry that impairs the dominant estate, stages construction in the easement corridor, and diverts runoff and physical access into a ditch that floods each of those is an independent breach. The cost exposure to this PUD's ratepayers for the litigation that follows is not theoretical. It is contractual. And it is mine to enforce.

Your letter to the public states this project "does not block, limit, or reduce any existing easements." Your own site plan and your own recorded instrument say otherwise. A single sentence in a public letter is not an easement analysis. It is not a site plan. And it is not a defense.

Second, the floodplain hypocrisy. The PUD response on Facebook states that you rejected the Dolarway Road site because it sits in a floodplain. The soil survey for the proposed site, the dominant unit Mitta ashy silt loam, 86.6 percent of the parcel is mapped by USDA on "inset fans, fan skirts, fan aprons, and flood plains."

The secondary Deedale unit is mapped explicitly on a flood plain landform, with a seasonal water table at 12 to 19 inches, and a saturated hydraulic conductivity of effectively zero. These are the same soils you said disqualified Dolarway. As mentioned earlier, rejecting one floodplain and building on another, while telling the public the new site is safer, is a distinction the soil science does not support.

And then there is the soil itself. Converting this parcel to the proposed facility requires stripping approximately 14,000 cubic yards of Prime Farmland topsoil roughly 1,868 heavy truck trips to haul it out and importing an equivalent volume of aggregate to replace it. The site plan then commits 5.79 acres, 60 percent of the parcel, to permanent industrial gravel. Total impervious surface reaches 53.5 percent.

For context, a typical rural 10-acre parcel in Kittitas County the Rural Working configuration the County's own comprehensive plan protects leaves 80 to 90 percent of the ground in pasture, hay, garden, or native cover.

The SEPA checklist at Section B.8.b answers that no impacts to agricultural land of long-term commercial significance are anticipated. That answer is indefensible.

The Washington Supreme Court in *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 502 (2006), established a three-part test for agricultural land of long-term commercial significance turning on "soil, growing capacity, productivity" the USDA data points the same direction on every factor. And in *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144 (2011), the Washington Supreme Court affirmed that this County had violated the GMA by failing to protect agricultural land and water resources.

Paving Prime Farmland with gravel is not a minor conversion. It is the irreversible loss of a resource the USDA classifies at the highest agricultural designation the federal government assigns and once that topsoil is hauled to a fill site and the gravel is compacted over what remains, no mitigation restores it. The checklist does not disclose this impact. It does not analyze it. It does not even name it. Under *Norway Hill*, that silence is itself the SEPA failure.

Third, the hazardous materials answer in your checklist is false. Question B.7.a(3) asks whether hazardous chemicals will be stored, used, or produced at this facility. Your sworn answer is "no." As you know, a standard electric utility service yard can store equipment with:

Polychlorinated biphenyls PCBs in transformer dielectric fluid, regulated under the federal Toxic Substances Control Act at 40 CFR Part 761, one of the most persistent and bioaccumulative contaminants known to environmental science.

Pentachlorophenol and **chromated copper arsenate** in treated utility poles arsenic under RCRA D004, chromium under D007, both priority chemicals under Washington's Model Toxics Control Act at RCW 70A.305.

Sulfur hexafluoride in switchgear greenhouse warming potential 23,900 times carbon dioxide, reportable under WAC 173-441.

Aqueous film-forming foam containing **per- and polyfluoroalkyl substances** PFAS designated a CERCLA hazardous substance in 2024, with an EPA drinking water limit of four parts per trillion.

Lead-acid battery electrolyte. Lithium-ion batteries that release hydrogen fluoride gas in thermal runaway. Diesel fuel. Hydraulic fluid. Herbicides. Mercury-containing meters. More than 30 categories. None disclosed.

Fourth, where those chemicals end up if the checklist is allowed to stand. Your drainfield and reserve area are sited at the north end of this parcel within 100 feet of a small pond on the adjacent property to the west, and directly downstream of approximately 25 million gallons of annual flood irrigation on the parcel immediately upgradient.

Over Deedale clay, with a water table at 12 to 19 inches, and a permeability effectively at zero, effluent does not percolate. It migrates laterally. A transformer fire sending 180,000 gallons of PFAS-laden firewater across that soil profile does not infiltrate. It flows overland toward two irrigation ditches, toward the hay crop, toward the livestock that hay feeds. PCB leachate from a transformer storage bay over a 12-inch water table does not contain itself. A pentachlorophenol pole yard in the rain does not contain itself.

The pathway from your gravel yard to the community's agriculture is a parallel drainage that is already part of a soil system carrying 25 million gallons of water a year and any soil scientist worth their salt would confirm that.

The Washington Supreme Court held in *King County v. Friends of Sammamish Valley*, 3 Wn.3d 861 (2024), that you cannot substitute another agency's downstream review, the Department of Health as cited in the PUD Facebook response, for the SEPA analysis you are required to perform yourself.

Fifth, the water story. You have told the public that water demand is 275 gallons daily or the equivalent to one and a half households per the current water bank metering system. This is not believable, considering the number of employees and visitors, along with the equipment, irrigation and site maintenance for a facility this size.

Your site plan shows up to 180,000 gallons of fire suppression capacity. At 275 gallons per day, filling those tanks takes 655 days. The water source is not in the record.

Under NFPA 22, tank capacity must reflect actual fire demand. A 6,300-square-foot office does not require 180,000 gallons. That volume is consistent with protecting a materials yard, storing the chemicals I just listed which your checklist says are not there.

Sixth, the lighting. Your letter to the public promised dark-sky alignment motion-activated lights, used only during outage response. Your own SEPA checklist states the storage yard will be lit "when it's dark outside." That is permanent nightly illumination of a nearly six-acre industrial yard, in a landscape that has been rural and dark for a hundred years.

This is not a dark-sky-aligned facility. This is the conversion of a dark-sky agricultural corridor into an industrial operations yard. Both statements in your record cannot be true. WAC 197-11-444 makes light and glare an enumerated element of the environment, SEPA protects.

The law on this record is not ambiguous. Under *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wn.2d 267 (1976), a DNS must survive the hard-look test.

It will not survive here. In *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737 (2014), the Washington Supreme Court reversed a DNS for an industrial use on Agriculture-20 zoned land in **this same county**.

In *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144 (2011), the Court held this county must regulate to protect agricultural land and water resources. The record before you today invites a third reversal.

Commissioners, I am not here to obstruct. I am here because the site is wrong. This farmland conversion is wrong. The drainfield location is wrong. The hazardous materials disclosure is wrong. The fire suppression math is wrong. The lighting representation is wrong. And the legal exposure to this District and to the County is substantial.

There is a better path, abandon this project on this site and find an industrial site with poor soil. This site, with prime farmland soil could be transformed into a conservation easement preserving agricultural use, paired with a Washington FFA mentorship connecting a working farmer with the next generation of Kittitas Valley producers.

This option keeps this Prime Farmland in production, serves the community it already feeds, and positions this PUD as the steward of the rural landscape your own letter says, you value. The land is irreplaceable. The decision is not. Thank you.