COMMENT OF SEPA THRESHOLD DETERMINATION

Kittitas PUD #1 Headquarters SE-26-00003

Farmer Stakeholder: George Thomas, 2473 North Ferguson Rd, Ellensburg, WA

Subject Parcel: #051833 4271 Kittitas Hwy, Ellensburg, WA

Applicant: Manastash Architecture Planning and Development (MAPD)

Lead Agency: Kittitas County Community Development Services

I. Executive Summary

This comment challenges the Determination of Non-Significance (DNS) for the proposed Kittitas PUD #1 Headquarters (SE-26-00003) under the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The comment demonstrates that the SEPA environmental checklist is materially inaccurate, internally contradictory, and silent on multiple categories of probable significant adverse environmental impact that Washington law requires the lead agency to evaluate before any threshold determination can issue. Farmer Stakeholder requests that the DNS be withdrawn, that a Determination of Significance be issued under WAC 197-11-360, and that a full Environmental Impact Statement be prepared.

The table below maps each category of deficiency to the specific checklist section where the error or omission occurs, the body section of this comment where it is analyzed, and the controlling Washington authority. Every case cited below has been independently verified.

Checklist deficiency #1: Active farmland mischaracterized as "former" agricultural land

Checklist §B.8.b states the site "was a former hay field" and that "no impacts" to surrounding farm operations are anticipated. The parcel is in fact embedded within a continuously farmed landscape, designated Rural Working, and the dominant soil (Mitta ashy silt loam) is USDA-classified as Prime farmland if irrigated. This misrepresentation infects the entire checklist because every subsequent impact analysis rests on a false baseline. Analyzed in Sections III and IV.C. Controlling authorities: King County v. Friends of Sammamish Valley, 3 Wn.3d 861 (2024) (SEPA checklist cannot rely on conclusory statements or other regulatory programs; must actually analyze ag impacts); Lewis County v. W. Wash. Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 502 (2006) (three-part ALLTCS test using "soil, growing capacity, productivity"); RCW 36.70A.177(1) (nonagricultural uses should be steered to lands with poor soils).

Checklist deficiency #2: Incomplete and shifting project description

Checklist §A.11 and the applicant's own transmittal email (Exhibit D) confirm that the number of 60,000-gallon fire suppression tanks was unresolved when the application was deemed complete. This affects water demand, impervious coverage, fire flow, and site drainage.

Analyzed in Section III.B. Controlling authority: WAC 197-11-315 and 197-11-060(3)(a)(iii) (checklist must describe the proposal with enough specificity to evaluate probable impacts).

Checklist deficiency #3: No hydrogeologic or drainfield analysis

Checklist §B.3.b provides one sentence on the drainfield. The record contains no design flow calculation, no soil type classification, no vertical separation demonstration, no seasonal high groundwater data, no nonresidential-source characterization under WAC 246-272A-0230(2)(f)(ii), and no plume migration analysis. Farmer Stakeholder's direct observation is that the water table routinely rises to within 12 inches of the surface during both winter and the May–September irrigation season, driven in part by 75 acre-feet (approximately 24.4 million gallons) of annual flood irrigation on the immediately upgradient parcel. The Deedale clay loam unit has a Ksat of 0.00–0.06 in/hr effectively impermeable. Analyzed in Section VII. Controlling authorities: Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144, 178 (2011) ("counties must regulate to ensure land use is not inconsistent with available water resources"); WAC 246-272A-0210, -0230, -0234 (on-site sewage design requirements).

Checklist deficiency #4: The "no hazardous chemicals" answer is contradicted by the fire suppression infrastructure

Checklist §B.7.a(3) states "no anticipated hazardous chemicals will be stored, used, or produced." The site plan (Exhibit E) confirms three 60,000-gallon fire suppression tanks—180,000 gallons of dedicated fire water. Under NFPA 22, tank capacity must "reflect actual fire demand." That volume is consistent with a facility storing transformer mineral oil (a Class IIIB combustible liquid), diesel fuel, hydraulic fluids, and potentially PCB-containing equipment—not a low-impact administrative office. The Group B well at 275 gpd would take approximately 655 days to fill the three tanks; the water source for the fire system is not disclosed. Analyzed in Section VIII. Controlling authority: Norway Hill Preservation & Protection Ass'n v. King County Council, 87 Wn.2d 267 (1976) (hard-look standard); Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014) (DNS reversed for industrial use on A-20 in this same County).

Checklist deficiency #5: No analysis of off-site agricultural impacts, easement interference, or Right to Farm

Checklist §B.8.b and §B.14 contain no analysis of impacts to adjacent active agriculture. The site plan narrows Farmer Stakeholder's 30-foot easement to a 25-foot paved strip, pinches the northeast corner with a rigid fence, and ignores an adjacent irrigation ditch that RCW 7.48.310(1) expressly identifies as part of a protected agricultural activity. Analyzed in Section V. Controlling authorities: Zonnebloem, LLC v. Blue Bay Holdings, LLC, 200 Wn. App. 178, 184 (2017) ("actions that make it more difficult to use an easement . . . are prohibited . . . unless justified by the needs of the servient estate"); Buchanan v. Simplot Feeders Ltd., 134 Wn.2d 673, 680 (1998) (Right to Farm three-part test); Thompson v. Smith, 59 Wn.2d 397, 408–09 (1962) (easement balancing test).

Checklist deficiency #6: No construction traffic analysis for approximately 1,868 heavy truck trips

Checklist §B.14 does not address the approximately 14,000 cubic yards of topsoil export and 14,000 cubic yards of aggregate import, generating approximately 1,868 heavy truck trips. No haul route study, intersection analysis, or agricultural access accommodation appears in the record. Analyzed in Section VI.

Checklist deficiency #7: Critical areas status denied despite County's own mapping

Checklist §B.8.h answers "N/A" to whether the site has been classified as a critical area. The County's own Critical Areas staff map (Exhibit F) hatches the entire parcel with a critical-areas overlay and maps a PSS1A wetland immediately northwest. Given Farmer Stakeholder's observation that the water table is routinely within 12 inches of the surface, portions of the project parcel itself may meet wetland hydrology criteria. Analyzed in Sections VII.L and IV.D.

Checklist deficiency #8: No lighting analysis

Checklist §B.11 dedicates three sentences to lighting and provides no photometric plan, fixture schedule, BUG ratings, CCT, or light-trespass calculation for a multi-acre industrial yard adjacent to residential, lodging, and agricultural uses. Analyzed in Section IX. Controlling authority: WAC 197-11-444 (light and glare as enumerated elements of the environment).

Checklist deficiency #9: No fire risk analysis despite catastrophic exposure

The checklist contains no analysis of fire risk to adjacent cured hay, residences, or the short-term rental. A transformer oil fire, diesel spill, or electrical fault at the PUD yard during the June–September haying season could ignite cured hay—one of the most flammable agricultural products in existence—producing a catastrophic loss of crop, equipment, and potentially structures. The 180,000 gallons of fire suppression water (three 60,000-gallon tanks) confirm the applicant's own engineers consider the fire hazard significant; the checklist denies it. Analyzed in Section VIII.

Checklist deficiency #10: Zero designed greenspace and no compatibility with the "Rural Working" designation

The site plan (Exhibit E) allocates zero acres of the 9.65-acre parcel to designed greenspace, landscape buffers, working agriculture, or native vegetation. The dominant land use is a 5.79-acre industrial gravel yard (60% of the parcel) with no visual screening between the PUD operation and Farmer Stakeholder's adjacent active hayfield, no street-frontage landscaping along Kittitas Highway, and no internal vegetation of any kind. The 30-foot agricultural easement along the eastern boundary is encumbered land within the PUD parcel that cannot be counted as project greenspace under any methodology. By contrast, a typical single-family residence on a comparable 10-acre rural parcel in Kittitas County leaves 80–90 percent of the ground in a combination of pasture, hay, garden, ornamental landscape, trees, and native vegetation—the configuration the County's comprehensive plan designates as "Rural Working." A site plan with zero greenspace cannot satisfy the comprehensive plan's "Rural Working" designation, the GMA's open-space and natural-resource goals at RCW 36.70A.020(8)–(10), or the KCC 17.60A conditional-use compatibility requirement that mitigation include "landscape buffers, special setbacks, screening, and/or site design using physical features." Analyzed in Section V.L. Controlling authorities: WAC 197-11-444 (land use, plants, animals, aesthetics, and recreation as enumerated elements of the environment); RCW 36.70A.020 (GMA planning goals); KCC 17.60A (conditional-use compatibility findings).

The legal standard

Under SEPA, a DNS may issue only where the proposal "will not have a probable significant adverse environmental impact." WAC 197-11-340. The Washington Supreme Court reviews a DNS under the "clearly erroneous" standard. Norway Hill, 87 Wn.2d at 274–75. This County has been reversed twice by the Washington Supreme Court on closely related issues: once for issuing a DNS for an industrial gravel/rock-crushing use on A-20 land (Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014)), and once for failing to protect agricultural land and water resources in its comprehensive plan (Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144 (2011)). Denial of a project under SEPA requires that significant adverse impacts be identified in a completed EIS and that reasonable mitigation is insufficient. RCW 43.21C.060. That is why the primary remedy requested in this comment is a Determination of Significance and full Environmental Impact Statement, as detailed in Section X.

The sections that follow develop each of these deficiencies in detail. Counsel and the hearing examiner may use the deficiency-numbering in this summary as a quick-reference key to the corresponding body sections and case authorities throughout the comment.

Taken together, these deficiencies fall short of the "hard look" that Washington courts require before an agency may issue a negative threshold determination. See Norway Hill Preservation & Protection Ass'n v. King County Council, 87 Wn.2d 267 (1976).

II. Evidentiary Foundation

This comment relies on the following documents already in the administrative record:

- Exhibit A SEPA Environmental Checklist with Receipt (SE-26-00003)
- Exhibit B Staff Map: Aerial View
- Exhibit C Kittitas County "Deemed Complete" correspondence (March 25, 2026)
- Exhibit D Applicant email re: site plans (March 19, 2026)
- Exhibit E Application Site Plan (MAPD, 50% DD, 03/13/26)
- Exhibit F Staff Map: Critical Areas
- Exhibit G Staff Map: Zoning (Agriculture 20)
- Exhibit H Staff Map: Land Use (Rural Working)

These exhibits are not merely supporting documents several of them directly contradict representations made in the SEPA checklist narrative.

III. Statement of Facts

A. Active agricultural use was misrepresented

The SEPA checklist (Exhibit A, §B.8.b) states that the site "was a former hay field (agricultural use)" and that the 9.65-acre parcel "will be converted for public utility administrative and storage uses." The checklist further asserts that "no impacts" to surrounding working farm operations are anticipated.

The County's own aerial imagery (Exhibit B) and land use map (Exhibit H, designating the parcel "Rural Working") show the parcel embedded within a continuous, actively farmed landscape. The parcel immediately to the north Farmer Stakeholder's property is in active alfalfa production. Characterizing the site as "former" agricultural land understates baseline conditions and the nature of the conversion.

B. The application was deemed complete while the project was still in flux

The County's "deemed complete" letter is dated March 25, 2026 (Exhibit C). However, the applicant's own transmittal email six days earlier (Exhibit D) states: "I'm attaching a civil and an architectural version because we are still determining if there will be 3 storage tanks or 2." Core fire-suppression infrastructure directly relevant to water demand, impervious coverage, and emergency services analysis was not yet fixed when SEPA review began.

C. The industrial character of the use is understated

Exhibit E (Overall Site Plan A1.0 / C1.0) shows a 6,300 sf administration building, a 10,200 sf pre-engineered materials warehouse, a large fenced equipment and materials yard, two (or three) 60,000-gallon fire suppression water tanks, an emergency generator, a Group B well and pump house, a septic tank with drainfield and reserve area at the north end, a portable yard ramp, and approximately 53.5% total impervious coverage. The project narrative and public notice nevertheless frame the proposal as a low-impact "administrative facility."

D. Site-specific hydrologic risk adjacent to Farmer Stakeholder's property

Farmer Stakeholder's adjacent parcel contains a known chronically wet area at the terminus of the shared 30-foot easement. Exhibit E locates the primary drainfield and drainfield reserve area at the extreme north end of the subject parcel directly adjacent to this wet zone. Exhibit F (Critical Areas) shows a PSS1A palustrine scrub-shrub wetland and mapped hydrologic features in the immediate vicinity. No hydrogeologic analysis, effluent migration analysis, or seasonal saturation study has been provided.

E. USDA-mapped soils: Prime farmland if irrigated, with wetness limitations

The USDA Natural Resources Conservation Service Web Soil Survey (Version 18, August 28, 2025; Kittitas County Area) maps the project parcel into two soil map units:

Map Unit 791 Mitta ashy silt loam, drained, 0 to 2 percent slopes (approximately 86.6% of area of interest)

- National map unit symbol 2l91; Mitta and similar soils 85 percent of map unit (minor components Deedale 10% and Opnish 5%).

- Landscape: valleys. Landform: inset fans, fan skirts, fan aprons, and flood plains.
- Parent material: alluvium mixed with volcanic ash in the upper part.
- Typical profile: ashy silt loam 0–34 inches (H1–H3); silty clay loam 34–60 inches (H4–H5).
- Slope: 0–2 percent. Depth to restrictive feature: more than 80 inches. Drainage class: somewhat poorly drained.
- Saturated hydraulic conductivity (Ksat) of the most limiting layer: moderately high, 0.20–0.57 in/hr.
- Depth to water table: approximately 34–49 inches. Flooding and ponding frequency: none.
- Calcium carbonate max 1 percent; maximum salinity nonsaline to slightly saline (0.0–4.0 mmhos/cm); maximum sodium adsorption ratio 10.0.
- Available water supply, 0–60 inches: high (about 11.7 inches).
- Land capability classification (irrigated): 2w. Land capability classification (nonirrigated): 2w. (The “w” subclass denotes wetness as the primary limitation; class 2 is among the best land for cultivated crops.)
- Hydrologic Soil Group: C.
- Ecological site: R008XY970WA, Alkali Terrace.
- FARMLAND CLASSIFICATION: PRIME FARMLAND IF IRRIGATED. —

Map Unit 789 Deedale clay loam, 0 to 2 percent slopes (approximately 13.4% of area of interest)

- National map unit symbol 2l8z; Deedale and similar soils 85 percent of map unit (minor components Mitta 10% and Nack 5%).
- Landscape: valleys. Landform: flood plains. Parent material: alluvium.
- Typical profile: clay loam 0–12 inches (H1); clay 12–54 inches (H2–H4); extremely gravelly sandy clay loam 54–60 inches (H5).

- Slope: 0–2 percent. Depth to restrictive feature: more than 80 inches. Drainage class: somewhat poorly drained.
- Saturated hydraulic conductivity (Ksat) of the most limiting layer: very low to moderately low, 0.00–0.06 in/hr effectively a permeability barrier.
- Depth to water table: approximately 12–19 inches. Flooding and ponding frequency: none.
- Maximum salinity nonsaline to very slightly saline (0.0–2.0 mmhos/cm); maximum sodium adsorption ratio 2.0.
- Available water supply, 0–60 inches: high (about 9.2 inches).
- Land capability classification (irrigated and nonirrigated): 4w.
- Hydrologic Soil Group: D.
- Ecological site: R008XY930WA, Loamy Bottom.
- FARMLAND CLASSIFICATION: FARMLAND OF STATEWIDE IMPORTANCE. —

Key implications from the USDA data

Three features of this data deserve emphasis. First, the dominant Mitta unit carries the USDA's explicit classification of "Prime farmland if irrigated." Prime farmland is a national designation reserved for soils with the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. The entire 5.79-acre gravel yard footprint by definition, the portion of the site proposed to become permanent impervious industrial surface will be converted from this Prime farmland designation to industrial use. That is exactly the type of impact SEPA requires the agency to disclose and evaluate, and exactly the type of impact that GMA Goal 8 and RCW 36.70A.177(1) direct counties to avoid.

Second, the Deedale minor unit (13.4%) exhibits an extraordinarily low saturated hydraulic conductivity 0.00 to 0.06 in/hr which is at or below the threshold at which engineered septic drainfield performance becomes infeasible. Combined with a seasonal water table mapped at 12–19 inches below ground surface on a flood-plain landform, the Deedale areas are simply not suitable for on-site sewage disposal under chapter 246-272A WAC.

Third, both map units carry a "w" subclass in their Land Capability classification, meaning wetness is the primary agricultural limitation. The same wetness that makes these soils "Class 2w" (Mitta) and "Class 4w" (Deedale) is precisely what makes siting a drainfield, a fire-suppression tank farm, an aggregate yard, and dust-suppression water application on them hydrologically dangerous. The USDA data is directly responsive to the checklist answers at §B.1.c (soil types), §B.3 (water), and §B.8.b (long-term commercial significance of farmland), and should not have been ignored.

F. The Working Farmer and the Affordable-Hay Market

1. The parcel is actively farmed, not a "former" hayfield

The SEPA checklist at §B.8.b describes the project parcel as a "former hay field." That description is inaccurate, and the inaccuracy matters because it is the foundation on which every other agricultural-impact conclusion in the checklist rests. The parcel is in fact under active cultivation by a professional farmer, who has worked the field for six years under a arrangements with the landowner. He cuts, rakes, and bales the hay each season, removes it from the field, and sells it into the regional feed market. This is not idle ground awaiting a higher use. It is a working hay operation, conducted year after year, on Prime farmland (if irrigated) under the USDA classification documented in Section III.E.

The distinction between "former" and "active" agricultural use is decisive under both SEPA and the Growth Management Act. A SEPA checklist that treats active farmland as if it were already abandoned cannot satisfy the "hard look" standard of Norway Hill Preservation & Protection Ass'n v. King County Council, 87 Wn.2d 267 (1976), and a county that approves industrial conversion of land it has misidentified as "former" agricultural use cannot meet the GMA's directive at RCW 36.70A.177(1) to steer nonagricultural uses toward lands with poor soils. The mischaracterization is not a clerical error. It is the move by which the checklist makes the entire agricultural impact analysis disappear.

2. The hay produced on this parcel is not premium Kittitas Valley export hay

The Kittitas Valley is internationally known for its premium-quality alfalfa and timothy hay. Much of the valley's output is grown to dairy-quality or export specifications and shipped to

high-value markets across the western United States and overseas, particularly to Japan and the Pacific Rim. That premium hay commands premium prices, and those prices are the headline number that most discussions of "Kittitas Valley hay" invoke.

The hay grown on the subject parcel is not that. It is a lower-grade product — typically a mixed grass hay or a lower-test alfalfa cut later in the season, with a higher fiber content, a lower relative feed value (RFV), and a price point that reflects those characteristics. To a dairy operator or a high-performance horse trainer, this hay would be unsuitable. To a small-acreage horse owner on a fixed income, a backyard goat keeper, a 4-H family raising a single steer, or a rural household maintaining a few sheep or beef animals on limited land, it is exactly what they can afford and exactly what their animals need.

3. The market for affordable hay is real, underserved, and economically vulnerable

There is a significant population in Kittitas County and the surrounding region whose livestock-keeping is not commercial agriculture in the conventional sense. They are retirees on fixed incomes who keep a horse for companionship, working families who maintain a small herd of goats or sheep for milk or fiber, 4-H and FFA youth raising a single project animal, rural residents whose two or three head of cattle are part of household food security rather than a profit center, and small-acreage owners for whom livestock is part of the rural way of life that brought them to the valley in the first place. None of these households can afford premium dairy-quality hay at the prices the export market sets.

For these households, the difference between affordable lower-grade hay and unaffordable premium hay is the difference between keeping their animals and selling them. When small-acreage livestock owners cannot find affordable feed, animals are surrendered, given away, or in the worst cases neglected. Local rescues and humane organizations across the western United States routinely report that hay-price spikes drive surrenders of horses and small ruminants. Affordable hay is, in a real sense, a quiet form of animal welfare infrastructure for the rural economy — and the farmers who produce it are providing a service that the premium market does not and cannot fill.

4. Why lower-grade hay is hard to find at any price

The economics of premium-hay production push more and more valley acreage toward dairy-quality and export-grade product, because that is where the margins are. A field cut for premium hay is cut early, on tight schedules, with expensive equipment, and shipped through brokers who serve out-of-state buyers. The lower-grade local market is comparatively invisible: it does not have brokers, it does not have export terminals, and it does not show up in the trade publications that drive hay-market reporting. A farmer who chooses to produce for that market — either because his ground does not support premium production, because he prefers a simpler cutting schedule, or because he believes the local affordable market deserves to be served — is filling a gap that the rest of the valley's agricultural economy does not.

That role is precisely what the Growth Management Act's working-lands protections are meant to preserve. The Act's definition of agricultural land of long-term commercial significance turns on "soil, growing capacity, productivity" and the land's vulnerability to more intense uses. Lewis County v. W. Wash. Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 502 (2006). It does not turn on whether the agricultural product is premium or commodity, export-grade or local-market. A field of lower-grade mixed grass hay serving small-acreage livestock owners is no less agriculturally productive, and no less worth protecting under the GMA, than a field of dairy-quality alfalfa shipped to Japan.

5. The farmer's own livelihood

The active farmer on the PUD parcel is not a hobbyist. The hay he cuts and bales on the project parcel is part of his working income, supplementing his other agricultural activities and contributing to his household. Loss of access to this parcel would directly reduce his annual production, his customer base, and his revenue. Replacing lost ground in the Kittitas Valley is not simple: irrigated farmland for lease is scarce, and what is available commands rents that may not pencil out for a lower-grade hay operation. The most likely outcome of the conversion is that he loses this acreage and does not replace it a quiet exit from the working agricultural economy that the County's comprehensive plan is supposed to protect.

Washington's Right to Farm Act, RCW 7.48.305, protects "agricultural activities conducted on farmland . . . consistent with good agricultural and forest practices and established prior to

surrounding nonagricultural and nonforestry activities" as presumed reasonable. Buchanan v. Simplot Feeders Ltd., 134 Wn.2d 673, 680 (1998). The farmer's operation meets every prong of that test. It is conducted on farmland; it is consistent with good agricultural practices; it was established long before the PUD's 2026 application; and it is exactly the kind of working agricultural activity Kittitas County's own Right to Farm ordinance at KCC 17.74.010 declares to have "priority in matters dealing with conflicting land uses in agricultural areas." Conversion of the parcel to an industrial PUD service yard ends his use of the land entirely. There is no "mitigation" that preserves an agricultural operation when the field beneath it is paved and fenced.

6. The downstream community impact

The hay produced on this parcel is sold into a network of regular customers — some of whom have purchased from [farmer name] for years. They include small-acreage livestock owners, 4-H families, and rural households across Kittitas County. When the parcel is converted to industrial use, those customers do not gain access to a different affordable supply. They face one of three options: pay materially higher prices for premium-grade hay they do not need and may not be able to afford; haul hay from outside the valley at additional cost and time; or reduce or eliminate their livestock holdings. None of these options is cost-free, and the burden falls disproportionately on the households least able to absorb it.

This is the kind of indirect and cumulative impact that SEPA expressly requires the lead agency to evaluate. WAC 197-11-060(4) directs that environmental analysis include "direct, indirect, and cumulative impacts caused by the proposal," and WAC 197-11-444 identifies socioeconomic effects as part of the environment SEPA protects. The checklist contains no analysis of who buys the hay produced on this parcel, who would be affected by the loss of that production, or what the cumulative effect of removing yet another working hay field from a valley already under conversion pressure looks like for the affordable-feed market. That silence is itself a SEPA failure.

7. The cumulative loss across the valley

The subject parcel is not the only working hay field in Kittitas County facing conversion pressure. Across the Upper Yakima basin, agricultural ground is being lost to residential

subdivision, public infrastructure, and commercial development at a pace that the Washington State Department of Agriculture and the County's own comprehensive planning documents acknowledge is unsustainable. Each conversion is justified, on its own terms, as a small change. The cumulative effect is the steady disappearance of the working agricultural landscape that gives the Kittitas Valley its economic identity and feeds both its premium and its affordable hay markets.

The Washington Supreme Court has held that this County is required to plan and regulate to protect agricultural land, and has reversed the County's comprehensive plan when it failed to do so. Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144 (2011). The Court has also held that SEPA review of land use decisions affecting designated agricultural land cannot be satisfied by reliance on other regulatory programs or by conclusory assertions that impacts will be acceptable; the lead agency must actually analyze the impacts. King County v. Friends of Sammamish Valley, 3 Wn.3d 861 (2024). On this record, the County has done neither for the conversion of this parcel.

8. What the SEPA record should contain

Before any threshold determination can issue, the SEPA record must, at a minimum, address the following:

1. Correction of the §B.8.b checklist statement to accurately describe the parcel as actively farmed, including identification of the operating farmer, the duration of the agricultural use, the crop grown, and the customary cutting and harvest schedule.
2. An evaluation of the parcel's agricultural productivity under the Lewis County test — "soil, growing capacity, productivity" — with reference to the USDA Web Soil Survey data establishing the dominant Mitta unit as Prime farmland if irrigated and the Deedale unit as Farmland of statewide importance.
3. An evaluation of the impact on the operating farmer, including loss of leased acreage, loss of revenue, and the practical availability (or unavailability) of replacement ground in the Kittitas Valley.
4. An evaluation of the indirect and cumulative impact on the affordable-hay market in Kittitas County and the surrounding region, including the population of small-acreage

livestock owners, 4-H and FFA participants, and rural households who depend on lower-grade hay at accessible price points.

5. An evaluation under RCW 7.48.305 and KCC 17.74 of whether the conversion is consistent with the Right to Farm Act's presumption of reasonableness for established agricultural activities and the County's own declaration that agriculture has priority in matters dealing with conflicting land uses in agricultural areas.
6. Consideration of alternative sites under RCW 36.70A.177(1) that would not require conversion of land actively producing agricultural product for an underserved local market.

9. Conclusion

The checklist's description of this parcel as a "former hay field" erases [farmer name], erases his customers, and erases the modest but real economic and animal-welfare role that this particular field plays in the Kittitas Valley. It also erases the SEPA analysis that the County is legally required to perform. Active hay production on Prime farmland, conducted by a working farmer who serves a population the premium market leaves behind, is exactly the kind of agricultural activity Washington's GMA, Right to Farm Act, and SEPA framework exist to protect. The record before the County does not protect it; it does not even acknowledge it. That is grounds, on its own, to require the County to withdraw the DNS, correct the checklist, and prepare the analysis the law requires before deciding whether the conversion of this particular field, with this particular farmer and this particular market role, is consistent with the County's obligations under Washington land use law.

IV. Argument

A. The SEPA checklist rests on an inaccurate factual baseline

SEPA requires agencies to take a "hard look" at probable environmental impacts before issuing a threshold determination, and judicial review of a negative threshold determination is conducted under the "clearly erroneous" standard. Norway Hill, 87 Wn.2d at 274–75. Where the baseline description of the site is wrong, the resulting impact analysis cannot satisfy that standard, because it never evaluates the actual existing conditions that SEPA and WAC 197-11-060 require agencies to consider.

Here, the parcel is actively farmed and designated "Rural Working" (Exhibit H). The checklist's characterization of "former" agricultural land and "no impacts" to surrounding farm operations is contradicted by the County's own mapping. A DNS issued on that record would be clearly erroneous within the meaning of Norway Hill.

B. Review proceeded on an incomplete and shifting proposal

A SEPA checklist must describe the proposal with enough specificity that the lead agency can evaluate probable significant impacts. WAC 197-11-315; WAC 197-11-060(3)(a)(iii). Here, a core design element the number and volume of 60,000-gallon fire suppression tanks was explicitly unresolved as of the day the checklist was transmitted (Exhibit D). That uncertainty affects water demand, the Group B water system design, impervious coverage, fire flow, and site drainage. The County nonetheless deemed the application complete six days later (Exhibit C).

C. The project converts Prime farmland contrary to GMA policy, and the checklist never analyzes the conversion

The parcel is zoned Agriculture 20 (A-20) and designated "Rural Working" in the County's comprehensive plan. The dominant soil map unit (Mitta ashy silt loam, 86.6% of the parcel) is classified by the USDA as Prime farmland if irrigated (Section III.E). The checklist at §B.8.b nevertheless answers that the site was not of long-term commercial significance and that no impacts to agricultural or forest lands of long-term commercial significance are anticipated. That answer is unsupported by the record and cannot stand against the USDA data.

The Growth Management Act supplies the interpretive framework SEPA review must apply here. GMA Goal 8 directs counties to "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries" and to "encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses." RCW 36.70A.020(8). Counties must designate, and adopt development regulations conserving, "agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170(1)(a); see also RCW 36.70A.060. And most directly on point here, the Legislature has instructed that counties "should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes." RCW 36.70A.177(1). A large industrial utility service yard on USDA-designated Prime farmland is the opposite of what that statute directs.

The Washington Supreme Court has established a three-part test for determining whether land qualifies as agricultural land of long-term commercial significance, looking to

> (a) whether the land is already characterized by urban growth.
>
> (b) whether it is primarily devoted to the commercial production of agricultural products or is capable of being used for such production based on land characteristics.
>
> (c) long-term commercial significance "as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses." Lewis County v. Western Washington Growth Management Hearings Bd., 157 Wn.2d 488, 502 (2006). The USDA Web Soil Survey data in Section III.E speaks directly to every factor in the Lewis County test that turns on land characteristics soil, growing capacity, productivity and it all points the same way: this is high-capability, irrigable, prime-or-statewide-important farmland embedded in a continuous, actively farmed rural working landscape.

This County has been told before that it is failing to protect its agricultural lands. In Kittitas County v. Eastern Washington Growth Management Hearings Board, 172 Wn.2d 144 (2011), the Washington Supreme Court affirmed the Growth Management Hearings Board's findings that Kittitas County had violated the GMA by failing to include provisions in its comprehensive plan

that protect rural areas, failed to provide for a variety of rural densities, failed to protect agricultural land, and failed to protect water resources.

The Court further held that "counties must regulate to ensure land use is not inconsistent with available water resources" and must "plan for land use in a manner that is consistent with the laws regarding protection of water resources." Id. at 178, 180. That holding directly implicates the present record, where the County is again being asked to permit an industrial conversion of agricultural land in an irrigation-dominated watershed without analyzing water resource impacts.

The Washington Supreme Court has also held that siting a facility on A-20 agricultural-zoned land in Kittitas County without a meaningful SEPA review cannot support a Determination of Non-Significance. Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014) (reversing DNS and underlying conditional use permit for a gravel/rock-crushing operation in the A-20 zone). And most recently, the Court held that a local government cannot satisfy SEPA on actions affecting designated agricultural land by relying on the existence of other regulatory programs to provide environmental protection; it must actually analyze, rather than assume away, agricultural impacts. King County v. Friends of Sammamish Valley, 3 Wn.3d 861 (2024). The checklist's blanket "no impacts" answer at §B.8.b is precisely the kind of unsupported conclusion that these authorities reject.

None of this means the County is categorically barred from permitting a PUD headquarters in the A-20 zone. It means that before the County can issue a DNS for the conversion of Prime farmland to an industrial utility service yard, the SEPA record must

(i) Disclose the USDA soil classifications.

(ii) Acknowledge the GMA directive to steer nonagricultural uses onto poor soils.

(iii) Identify any alternative sites considered and rejected.

(iv) Apply the Lewis County test to the actual land characteristics of this parcel.

None of that has been done.

D. The drainfield and hydrology impacts require site-specific analysis

WAC 197-11-060(4) requires agencies to consider indirect and off-site impacts, including impacts to surface and groundwater. The drainfield and reserve area are sited adjacent to a known wet zone on Farmer Stakeholder's property and within the vicinity of mapped critical-area features (Exhibit F). No groundwater flow analysis, no effluent migration analysis, and no seasonal saturation analysis has been provided. Issuing a DNS without that analysis would leave the record unable to support a "hard look" finding.

E. Easement impacts were ignored

The project is served by a 30-foot easement that crosses Farmer Stakeholder's active alfalfa field and terminates in the chronically wet area identified above. The checklist does not address impacts to that easement, including construction-phase rutting, compaction, drainage alteration, and interference with oversized agricultural equipment access all of which are foreseeable consequences of the scale of construction haul traffic described in Section VI below.

F. Noise and light impacts to adjacent residential and lodging uses were not evaluated

Exhibit E shows perimeter security lighting, an industrial yard layout, 24/7 fire-suppression infrastructure, and pole-mounted lighting across the yard and parking areas. No lighting plan, photometric study, or noise analysis has been provided, despite the proximity of Farmer Stakeholder's residence and short-term rental use to the east.

G. Improper reliance on the optional DNS process

WAC 197-11-355 allows an agency to combine notice and comment only when the lead agency has sufficient information to reasonably conclude there will be no probable significant adverse impacts. Where, as here, the proposal remains unresolved (Exhibit D), the baseline is misstated (Exhibit A vs. Exhibits B and H), and multiple impact categories are unanalyzed, the preconditions for the optional DNS procedure are not met.

H. Cumulative impacts were not evaluated

SEPA requires consideration of cumulative impacts. WAC 197-11-060(4)(d); WAC 197-11-792. The combined effect of (i) full conversion of a productive Rural Working parcel, (ii) ~14,000 CY of topsoil export and ~14,000 CY of aggregate import, (iii) industrial yard operations, (iv) drainfield placement adjacent to a wet zone, and (v) perimeter lighting and noise on adjacent agricultural, residential, and lodging uses has not been addressed in the aggregate.

V. Industrial and Agricultural Use Conflicts

Beyond the headline impacts addressed above, the proposed industrial-scale utility yard creates a suite of site-specific, operational conflicts with active agriculture on Farmer Stakeholder's adjacent alfalfa parcel and on the surrounding Rural Working landscape. Kittitas County has adopted KCC Chapter 17.74 (Right to Farm for the Protection of Agricultural Activities), which expressly provides that "Agriculture has priority in matters dealing with conflicting land uses in agricultural areas" and that agricultural activity "shall not be limited as to hours of the day nor days of the week." KCC 17.74.030. That baseline is important in two directions: the SEPA record must (i) disclose the full operational envelope of existing agriculture that the PUD use is required to accept, and (ii) identify impacts running from the industrial use onto the farm that cannot be cured by curtailing farm operations. Neither disclosure has been made.

A. Fugitive dust from a 5.79-acre unpaved aggregate yard

Operating a multi-acre fenced materials yard with routine heavy equipment circulation, outdoor stockpiles, and a "portable yard ramp" (Exhibit E) is a chronic source of fugitive dust under dry eastern-Washington conditions. Deposition of that dust onto adjacent standing alfalfa is a direct agricultural impact: dust coatings reduce photosynthesis, lower relative feed value (RFV), foul dairy-quality hay, and provide a mechanical abrasive that accelerates equipment wear during cutting and baling. The checklist (Exhibit A, §B.2.c) commits only to vague "construction best practices" during construction and is silent on operational dust control.

B. Herbicide and pesticide drift in both directions

Alfalfa operations in the Kittitas Valley routinely use ground-based herbicide and insecticide applications, and in some years aerial application. Under KCC 17.74, those applications cannot be curtailed because a new neighbor objects. The SEPA record should therefore:

(i) Disclose that PUD employees, visitors, and stored equipment will be periodically exposed to off-target drift from lawful adjacent applications.

(ii) Identify the PUD's own vegetation-management program (yard weed control around transformer storage, fenceline management) so that drift onto Farmer Stakeholder's hay crop can be evaluated. Neither is addressed.

C. Introduction of noxious weeds via imported aggregate

The construction phase described in Section VI involves importing approximately 14,000 cubic yards of aggregate from off-site quarry and pit sources. Imported aggregate is a well-documented vector for noxious weed seed, including species listed by the Kittitas County Noxious Weed Control Board (e.g., knapweed species, Dalmatian toadflax, rush skeletonweed). The checklist (Exhibit A, §B.4.e) acknowledges only that "any noxious weeds will be treated with recommended herbicides" a reactive response, not a vector-control strategy. There is no requirement that imported material come from weed-free certified sources and no monitoring program.

D. Irrigation and water-resource conflicts

The checklist (Exhibit A, §B.3.b) proposes a new Group B well drawing up to 275 gallons per day from the same shallow aquifer system that supports adjacent irrigated agriculture and Farmer Stakeholder's domestic use. No aquifer characterization, drawdown analysis, or interference analysis with adjacent wells or surface-water irrigation has been provided. Separately, wheel-line and sprinkler irrigation on the surrounding fields produces lawful overspray at the field edges; that overspray onto a transformer storage yard and security fencing presents both a legitimate operational concern for the PUD and a predictable pathway for complaints against the farm.

E. Shared-easement access conflicts with oversized agricultural equipment

The 30-foot easement that serves the PUD crosses and terminates within Farmer Stakeholder's active hayfield and is regularly used by swathers, balers, bale wagons, and tractor-drawn implements that approach or exceed the full easement width. Sustained PUD use of that easement especially by service trucks, delivery vehicles, and the construction traffic quantified in Section VI is reasonably likely to create blocking, passing, and turning conflicts during harvest windows. No operational protocol, priority-access provision, or turnout plan has been proposed.

F. Early-morning and late-evening farm operations the PUD must accept

Quality hay production in eastern Washington depends on cutting and baling at dawn and dusk, when leaf moisture retains leaves on the stem. Farm equipment therefore operates before sunrise and after sunset during the cutting and baling windows. Under KCC 17.74.030, those hours cannot be restricted. The SEPA record must accordingly assume, and disclose, ongoing early-morning and late-evening diesel, lighting, and equipment activity immediately adjacent to the PUD's administrative building and should consider whether employee complaints against the farm are a foreseeable secondary impact that the County has an interest in anticipating.

G. Rodent, bird, and pest harborage from industrial yard materials

Large outdoor materials yards with wood pallets, transformer crating, conduit stacks, and equipment stored on skids are well-known harborage for rodents (voles, pocket gophers) and nesting birds. Rodent populations amplified on the PUD yard migrate into adjacent alfalfa and cause measurable stand damage, crown feeding losses, and irrigation-line damage. No pest-management or housekeeping commitment is included in the record.

H. Wildfire ignition risk adjacent to cured hay and standing crop

The project stores and maintains electrical distribution equipment, including transformers (Exhibit A, §B.7.a), operates an emergency diesel generator, and will concentrate vehicle traffic and employee activity immediately adjacent to cured hay crops and standing alfalfa during the fire season. Transformer failures, hot exhaust contact with dry vegetation, and vehicle catalytic-converter ignitions are documented wildfire causes in Kittitas County. No wildfire risk assessment, defensible-space plan, or coordination plan with Kittitas Valley Fire & Rescue (Fire District 2) is included in the record, despite the Fire District mapping in the staff exhibits.

I. Stormwater and tailwater commingling

The site plan (Exhibit E) proposes a stormwater detention pond to collect runoff from approximately 53.5% impervious coverage, including the gravel yard where vehicles, transformers, and maintenance equipment will be stored. That runoff which may carry petroleum residues, de-icing materials, and transformer-area residues will discharge into the same County ditch infrastructure that carries irrigation tailwater serving adjacent farm parcels. The checklist

(Exhibit A, §B.3.c) provides only a one-sentence assurance that the pond is "engineered to be filtered"; no water-quality analysis or monitoring program is proposed.

J. Code hook: KCC 17.60A conditional-use compatibility findings

To the extent the PUD use is authorized in the A-20 zone through a conditional use pathway, KCC 17.60A requires the County to impose "mitigation measures to effectively reduce the potential for land use conflicts with agricultural and resource lands, such as: landscape buffers, special setbacks, screening, and/or site design using physical features" and to find that the proposal "will ensure compatibility with existing neighboring land uses" and "is consistent with the intent and character of the zoning district in which it is located." The SEPA record in its present form cannot support those findings because the underlying conflicts have not been disclosed or analyzed.

K. Easement interference, agricultural access, and the Right to Farm

The analysis in subsection E above is the short version. The proposed site plan imposes a set of physical improvements on Farmer Stakeholder's 30-foot easement that narrow it, pinch it at its most critical corner, and change how stormwater interacts with an adjacent irrigation ditch all without any analysis in the record. Washington easement law and Washington's Right to Farm framework together require the County to address these impacts before it can reasonably conclude there are no probable significant adverse effects.

K.1. The proposal narrows a 30-foot easement to a 25-foot functional width

Exhibit E depicts the PUD's paved access and circulation surface within the 30-foot easement as approximately 25 feet wide, with a perimeter security fence running alongside the paved strip on the PUD side. Five feet of the recorded 30-foot easement is thereby converted from usable agricultural travel width to an unpaved shoulder pinched between the fence and the paved edge. For a haying operation, that five-foot reduction is not cosmetic: modern haying equipment routinely exceeds 12 feet in transport width, and oversized loads such as stacked bale wagons commonly require the full width of a 30-foot easement plus overhang tolerance to navigate without damage. The checklist does not disclose the actual paved width, the fence setback, the effective functional clearance, or any analysis of whether common haying equipment can operate within it.

K.2. The northeast corner pinch point

Exhibit E shows that the PUD parcel comes to a sharp corner at its northeast boundary along the line where the easement and Farmer Stakeholder's field meet. Agricultural equipment making the turn into or out of the field at that corner routinely overhangs the fence line. A rigid perimeter security fence at that corner, installed tight to the pavement edge, converts overhang tolerance into a hard stop: any implement that extends beyond the tractor profile will strike the fence. In practical terms, the sharp-corner geometry plus a rigid fence on the PUD side closes the turn for any equipment larger than a light tractor. No turning-movement analysis, equipment clearance envelope, or fence placement analysis appears in the SEPA record.

K.3. The irrigation ditch along the easement is not addressed

An irrigation ditch runs along the east side of the easement corridor and is part of the water conveyance system serving the surrounding fields. Irrigation ditches in the Kittitas Valley are active, pressurized or gravity-fed infrastructure, and disturbance, sedimentation, or contamination at any point can propagate through the network. The SEPA record does not identify the ditch at all, does not describe any separation between the proposed paved surface and the top-of-bank, does not address whether construction activity will cross or realign the ditch, does not explain where stormwater from the paved PUD access will go, and does not discuss the operational consequences of discharging paved-surface runoff into an active agricultural irrigation ditch. Runoff directed into that ditch, intentionally or otherwise, would deliver petroleum residues, transformer-related compounds, de-icing materials, and herbicide residues to downstream farms, implicating RCW 90.48.020 and the Water Pollution Control Act.

K.4. Washington easement law prohibits unreasonable interference

Washington courts have long held that the owner of a servient estate may use its own land in any manner that does not unreasonably interfere with the dominant estate's easement rights, and that the rights of the two owners "must be construed to permit a due and reasonable enjoyment of both interests so long as that is possible." Thompson v. Smith, 59 Wn.2d 397, 408–09 (1962); see also Cole v. Laverty, 112 Wn. App. 180, 185 (2002) (reaffirming the Thompson balancing test). More recently, the Washington Court of Comments has adopted the Restatement (Third) of Property: Servitudes formulation of the rule. In Zonnebloem, LLC v. Blue Bay Holdings, LLC, 200 Wn. App. 178, 184 (2017), the court explained that "[r]easonableness requires a balancing of

two interests: the necessity of the restraint for the protection of the servient estate against the degree of interference with the easement holder's use," and that "[a]ctions that make it more difficult to use an easement . . . are prohibited . . . unless justified by the needs of the servient estate." Id. (quoting Restatement (Third) of Property: Servitudes § 4.9 (2000)).

Applied to this site, the PUD's installation of a 25-foot paved surface inside a 30-foot agricultural easement, backed by a rigid security fence pinching the single turning corner into Farmer Stakeholder's hayfield, with no setback analysis and no turning-movement analysis, is precisely the kind of action that "makes it more difficult to use" the easement. The County cannot lawfully conclude on this record that the interference is justified by the needs of the servient estate, because the record contains no analysis of the servient estate's operational needs or of the range of design alternatives that would accommodate them.

K.5. Washington's Right to Farm framework reinforces the analysis

The Washington State Right to Farm Act, RCW 7.48.305(1), provides that "[n]otwithstanding any other provision of this chapter, agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity or practice has a substantial adverse effect on public health and safety." The Legislature's purpose in enacting the statute, stated in RCW 7.48.300, was to protect agricultural activities from nuisance suits that encourage "the premature removal of the lands from agricultural uses."

The statutory definition of "agricultural activity" at RCW 7.48.310(1) is directly on point. The definition expressly includes "operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities" and "roadway movement of equipment and livestock." The Legislature has thereby expressly identified the three activities at issue here irrigation water in the ditch alongside the easement, movement of agricultural equipment along the shared access corridor, and operation of haying machinery on the adjacent parcel as statutorily protected agricultural activities.

The Washington Supreme Court has applied the Right to Farm Act and set out its framework in Buchanan v. Simplot Feeders Ltd., 134 Wn.2d 673, 680 (1998). The Court held that a challenged agricultural activity is presumed reasonable and does not constitute a nuisance if three conditions are met:

(1) the activity does not have a substantial adverse effect on public health and safety.

(2) the activity is consistent with good agricultural practices, laws, and rules.

(3) the activity was established prior to surrounding nonagricultural activities. Id.

Farmer Stakeholder's alfalfa operation meets all three conditions as against the proposed PUD use. Buchanan also confirmed that the Right to Farm Act does not shield farm operations from liability for trespass-type off-site damage, meaning the Act's protections and the common-law limits on neighbor-to-neighbor interference operate together rather than one to the exclusion of the other. Id. at 684.

Kittitas County has adopted its own Right to Farm ordinance at KCC Chapter 17.74. KCC 17.74.010 declares that "agriculture has priority in matters dealing with conflicting land uses in agricultural areas." KCC 17.74.030 provides that agricultural activity consistent with good agricultural practices is presumed not to be a nuisance and "shall not be limited as to hours of the day nor days of the week."

K.6. Required mitigation for the easement and Right to Farm issues

1. A recorded survey of the actual easement boundaries, fence location, paved edge, and turning movements at the northeast corner, prepared by a licensed surveyor and incorporated into the SEPA record.
2. A turning-movement analysis using AASHTO or equivalent design vehicle envelopes for the oversized agricultural equipment actually used on Farmer Stakeholder's parcel, including swathers, tractor-drawn balers, bale wagons, and round-bale carriers.
3. A commitment that the full 30-foot easement width will remain functionally available for agricultural travel, with the security fence set back from the easement boundary rather than flush with the pavement edge.

4. Redesign of the northeast corner to provide a tapered or angled corner with documented overhang clearance for oversized equipment.
5. Identification of the irrigation ditch on the east side of the easement, with disclosed top-of-bank, hydraulic capacity, and connection to downstream waters.
6. A stormwater analysis demonstrating that no PUD runoff will enter the irrigation ditch, or if complete avoidance is not feasible a treatment-train analysis with water-quality monitoring and enforceable discharge limits; and
7. A written accommodation plan under Kittitas County's Right to Farm ordinance confirming that PUD operations and fencing will not curtail lawful agricultural activity on the adjacent parcel.

L. Greenspace, open space, and site coverage—and what a single-family residence on 10 acres looks like by comparison

L.1. There is no designed greenspace on the project site

The overall site plan submitted with the application (Exhibit E, Sheet A1.0/C1.0) shows the entire 9.65-acre parcel laid out as an industrial utility yard from the south property line at Kittitas Highway to the north property boundary. From south to north, the plan depicts: the access drive and monument sign at the highway frontage; three 60,000-gallon fire suppression water storage tanks; a Group B well; a pump house; the administrative building; the warehouse; an emergency generator, septic tank, and portable yard ramp; the 5.79-acre gravel yard with associated gravel overflow; perimeter security fencing with a gate; two fire hydrants; and at the extreme north end, the drainfield and drainfield reserve area.

There is no internal landscaping. There are no trees. There is no lawn, no ornamental beds, no hedgerows, no buffer plantings, no vegetated stormwater features, and no designed open space of any kind. There are no street-frontage landscaping commitments, no interior courtyard, no employee outdoor gathering space, no demonstration garden, no native vegetation restoration area, and no riparian or wetland buffer planting.

The narrow strips of unmarked ground around the perimeter of the developed footprint are required setback areas, not designed greenspace. They will, in the absence of any landscaping commitment, default to the same condition as the rest of the disturbed site: bare soil, weed colonization, and dust. The drainfield and drainfield reserve area at the north end, while not paved, are engineered subsurface sewage infrastructure. They cannot be planted with trees, cannot be grazed, cannot be traversed by vehicles, and cannot be used as habitat. They are not greenspace in any functional sense.

L.2. The 30-foot easement is encumbered land within the parcel, not project greenspace

A particular point of clarity is required regarding the 30-foot easement that runs along the eastern edge of the project parcel. The easement is located within the PUD's 9.65-acre parcel—it burdens the PUD's land for the benefit of Farmer Stakeholder's adjacent farm parcel to the north. That arrangement means the 30-foot easement strip is encumbered ground that the PUD does not have the legal right to use freely. The PUD cannot build on it, cannot fence across it in a way that

blocks agricultural access, cannot pave over it without preserving the agricultural travel function it serves, and cannot landscape it in a way that interferes with passage of oversized agricultural equipment. It is, for purposes of the PUD's site planning, encumbered ground that nevertheless counts against the 9.65-acre total.

This matters for the greenspace analysis in two distinct ways. First, the easement cannot be counted as project greenspace. It is a servitude with a defined functional purpose—agricultural access for Farmer Stakeholder's farm equipment—not a landscape feature the PUD provides as part of its site design. If any part of the application or the SEPA checklist treats the easement strip as part of the project's open-space allocation, that is a disclosure problem the County should correct. Second, the easement reduces the developable area the PUD actually has to work with. The 30-foot strip running approximately 1,297 feet north-south along the eastern boundary covers roughly 0.89 acres of the 9.65-acre parcel—about 9 percent of the total—and that ground is unavailable for buildings, gravel yard, drainfield, or any other PUD use that would interfere with agricultural travel.

The practical effect is that the PUD has crammed an industrial utility yard, three 60,000-gallon fire suppression tanks, two buildings, a 5.79-acre gravel yard, a drainfield, a stormwater pond, and all associated infrastructure into roughly 8.76 acres of usable land, not 9.65—because the 30-foot easement strip is not theirs to develop. That tighter footprint is part of why the site plan contains zero designed greenspace: there is no room for it once the encumbered area is removed from the buildable budget. The greenspace deficit and the easement encumbrance are connected, not independent.

L.3. Quantitative breakdown of site coverage

The following breakdown reconciles the components depicted on the site plan against the 9.65-acre total. The figures for buildings and the gravel yard are taken from the project description and the dimensioned site plan; the remainder are conservative estimates from scaling the plan. The point of the breakdown is not the exact decimal but the structural fact: no portion of the parcel is allocated to designed greenspace.

- Total parcel: 9.65 acres.

- Industrial gravel yard: 5.79 acres (approximately 60.0% of the parcel). This is the single largest land use on the site by a wide margin.
- Buildings: approximately 16,500 sf total (10,200 sf materials warehouse + 6,300 sf administrative building), or approximately 0.38 acres.
- Paved circulation, parking, and access drives: estimated at 0.5 to 0.8 acres based on the site plan.
- Fire suppression water tanks (3 × 60,000 gallons), well house, pump house, emergency generator pad, septic tank, monument sign, and accessory structures: approximately 0.2 to 0.3 acres of additional pads and structures.
- Stormwater detention pond: approximately 0.1 to 0.2 acres.
- Drainfield and drainfield reserve area: approximately 1.0 to 1.5 acres of engineered subsurface infrastructure at the north end of the parcel.
- Encumbered easement area within the parcel boundary: the 30-foot agricultural access easement along the eastern boundary covers approximately 0.89 acres and is unavailable for PUD development. This area is part of the 9.65-acre total but is not buildable PUD land.
- Required setbacks (residual unbuilt strips along the property lines): approximately 1.5 to 2.0 acres of leftover ground, with no landscaping commitment, no irrigation, no maintenance plan, and no vegetative cover specified.
- Designed landscaped greenspace: 0 acres. None shown on the site plan.
- Working agricultural ground: 0 acres. The entire parcel is removed from production.
- Native vegetation, trees, wildlife habitat: 0 acres. None shown on the site plan.

The checklist (Exhibit A, §B.2) discloses approximately 53.5% impervious coverage. That figure understates the functional loss of permeable, productive ground because it excludes the gravel yard surface, which while technically permeable in a stormwater calculation is functionally compacted, vegetation-free, and incapable of supporting any of the ecological or aesthetic functions that greenspace provides. Adding the gravel yard to the impervious figure produces a functional coverage above 90 percent of the parcel.

L.4. Comparison to a typical single-family residence on 10 acres

To put the proposed project's site coverage in context, the comparison below sets it against a typical single-family residence on a comparable 10-acre rural parcel in Kittitas County—the kind of property a working farmer, a retiree, or a hobby-farm family would own and live on. The comparison is illustrative rather than precise; actual single-family parcels vary widely. The point is the structural difference between a use that places one household and its associated outbuildings on a parcel while leaving the great majority of the ground in pasture, hay, garden, trees, or native vegetation, and a use that converts the entire parcel to industrial infrastructure.

Land use category	PUD HQ proposal (9.65 ac)	Typical SFR on 10 acres
Buildings (admin, warehouse, accessory)	≈ 16,500 sf (≈ 0.38 ac)	≈ 3,000–5,000 sf (≈ 0.07–0.11 ac)
Industrial gravel yard / outdoor storage	5.79 ac (60.0%)	0 ac
Paved circulation, parking, access	≈ 0.5–0.8 ac	≈ 0.05–0.15 ac (driveway)
Fire suppression tanks (3 × 60,000 gal), well house, pump house, generator, septic tank, monument sign	≈ 0.2–0.3 ac of pads	≈ 0 ac (well only)
Drainfield + reserve area (engineered subsurface, not usable as habitat or open space)	≈ 1.0–1.5 ac	≈ 0.1–0.2 ac
Stormwater detention pond	≈ 0.1–0.2 ac	0 ac
Designed landscaped greenspace (lawn, beds, trees, buffers)	0 ac (none shown on plan)	≈ 0.5–1.5 ac (yard, garden, ornamentals)
Working pasture, hay, or crop ground	0 ac	≈ 7–9 ac (typical hobby farm/grazing)
Trees, hedgerows, native vegetation, wildlife habitat	0 ac (none shown on plan)	≈ 0.5–2 ac typical
Required setbacks (residual unbuilt strips along property lines)	≈ 1.5–2.0 ac (unplanted, unmaintained)	incidental

The contrast is structural, not marginal. A typical single-family residence on 10 acres of rural Kittitas County land places a house, a driveway, a well, a septic system, and accessory

outbuildings on a small fraction of the parcel—typically 1 to 2 acres of total developed footprint—and leaves the remaining 8 to 9 acres in a combination of working pasture or hay, garden, ornamental landscape, trees, hedgerows, and native vegetation. The land continues to produce food, support wildlife, infiltrate precipitation, store carbon, and contribute to the rural visual character that the County's comprehensive plan designates as "Rural Working." The proposed PUD project does the opposite: it places industrial buildings, a 5.79-acre gravel yard, three large fire suppression tanks, a well, a pump house, a generator, paved circulation, a stormwater pond, and a drainfield across the entire parcel, leaves zero acres in productive use, zero acres in designed greenspace, zero acres in native vegetation, and removes the parcel from the rural working landscape entirely.

L.5. Why this matters under SEPA, the GMA, and the County's comprehensive plan

Greenspace and open space are not aesthetic afterthoughts under Washington land use law. They are recognized environmental elements with concrete planning and SEPA significance:

- WAC 197-11-444 identifies "land and shoreline use" (including "relationship to existing land use plans"), "plants," "animals," "energy and natural resources," "aesthetics," and "recreation" as enumerated elements of the environment. A site plan that allocates zero acres to vegetation, zero acres to wildlife habitat, and zero acres to any visual or recreational open space cannot be characterized as having "no probable significant adverse impact" on these elements.
- RCW 36.70A.020 lists the GMA planning goals, including Goal 8 (maintain and enhance natural resource-based industries, including productive agriculture); Goal 9 (retain open space and develop recreational opportunities); and Goal 10 (protect the environment and enhance the state's high quality of life). A project that converts a 9.65-acre Prime farmland parcel to 100 percent industrial coverage with zero greenspace is in tension with each of these goals.
- The Kittitas County Comprehensive Plan designates the project area as "Rural Working," a designation explicitly intended to preserve the working landscape that combines agricultural production, low-density rural residential use, and the open space character that defines the rural valley. A project that eliminates the working agricultural use of the

parcel and replaces it with an industrial yard with zero designed greenspace is the opposite of "Rural Working."

- KCC 17.60A requires conditional-use compatibility findings, including "mitigation measures to effectively reduce the potential for land use conflicts with agricultural and resource lands, such as: landscape buffers, special setbacks, screening, and/or site design using physical features." The site plan contains none of these. Zero landscape buffers, no internal screening, and no site design features that mitigate the visual or functional contrast between an industrial yard and the surrounding agricultural landscape.

L.6. The visual and ecological consequences

The absence of greenspace has practical consequences that the SEPA record does not address:

- Visual impact on adjacent residences and the short-term rental: the parcel will read from every adjacent vantage point as a fenced industrial yard rather than as part of the rural agricultural landscape. The checklist contains no visual simulation, no photo rendering from adjacent property, and no analysis of the change in viewshed.
- Loss of pollinator habitat: the existing hayfield supports pollinators and beneficial insects that contribute to the productivity of surrounding alfalfa, clover, and other flowering crops. Conversion to a gravel yard with no replacement vegetation eliminates this contribution.
- Loss of wildlife habitat: the parcel currently provides foraging habitat for ground-nesting birds, raptors, deer, and small mammals that move through the hayfield-and-field-edge mosaic of the rural valley. Conversion to fenced industrial use eliminates this habitat function.
- Loss of carbon sequestration: actively managed alfalfa and grass hay fields sequester carbon in root systems and soil organic matter at rates substantially higher than bare gravel.
- Heat island effect: a 5.79-acre unvegetated gravel yard absorbs and re-radiates solar energy at significantly higher rates than vegetated ground, creating a localized heat island that will affect adjacent crops and microclimate.

- Stormwater interaction: vegetation slows runoff, promotes infiltration, and filters surface water. A site with zero designed greenspace eliminates these functions and shifts the entire stormwater burden to engineered detention infrastructure on a site that, as Section VII of this comment documents, is already hydrologically marginal.

L.7. What the SEPA record should contain

8. A complete and dimensioned greenspace and landscape plan disclosing every planted area, the species composition, the maintenance and irrigation commitments, and the percentage of the parcel allocated to designed greenspace.
9. A landscape buffer plan along the eastern property line adjacent to Farmer Stakeholder's working agricultural parcel, providing visual screening, dust interception, and pollinator habitat.
10. A street-frontage landscaping commitment along Kittitas Highway consistent with the rural visual character of the corridor.
11. A KCC 17.60A compatibility findings document analyzing how the proposed site design—with zero landscape buffers, zero internal screening, and zero designed greenspace—can satisfy the conditional-use compatibility standard for an industrial use adjacent to active agriculture.
12. A visual impact analysis with photo simulations from adjacent residential, lodging, and agricultural vantage points.
13. A wildlife habitat assessment quantifying the existing habitat function of the parcel and the loss associated with conversion.
14. A reconciliation of the proposed site plan with the comprehensive plan's "Rural Working" designation.
15. A clear statement, in numeric form, of the percentage of the parcel allocated to: buildings; impervious paved surface; gravel yard; subsurface infrastructure (drainfield); stormwater facilities; designed greenspace; and unmaintained residual setback strips.

L.8. Conclusion

The greenspace question has a simple answer: the proposed project allocates zero acres of the 9.65-acre parcel to designed greenspace. The 30-foot agricultural access easement along the eastern boundary lies within the PUD parcel but is encumbered land the PUD cannot freely develop—it covers approximately 0.89 acres and serves Farmer Stakeholder's farm equipment, not the PUD's site design. It is not project greenspace under any methodology, and if the application treats it as such, that is a disclosure problem. The drainfield and reserve area are engineered subsurface infrastructure and are not greenspace in any functional sense. The narrow strips of unmarked ground around the perimeter are residual setback areas with no landscaping commitment. By contrast, a typical single-family residence on a comparable 10-acre rural parcel in Kittitas County would devote 80 to 90 percent of the ground to working pasture, hay, garden, ornamental landscape, trees, and native vegetation—the configuration the County's comprehensive plan designates as "Rural Working" and that the GMA at RCW 36.70A.020 directs counties to protect. The contrast between the two uses, on parcels of essentially the same size, is the simplest possible illustration of why this proposal is incompatible with the location it has chosen.

VI. Construction Haul and Traffic Impact Analysis

A. Scale of construction haul activity

Using the dimensions shown on Exhibit E (gravel yard ~5.79 acres) and the site-specific subsurface condition observed on Farmer Stakeholder's adjacent parcel where a conservative estimate of approximately 18 inches of topsoil (likely 30 in.) must be excavated to reach the underlying clay layer the construction-phase earthwork and import volumes can be estimated:

Category	Area (ac)	Area (sf)	Depth (ft)	Volume / Trips
Gravel yard excavation	5.79	252,200	1.5	14,011 CY (~934 loads out)

Typical structural section assumed for the gravel yard (matching the 1.5 ft excavation depth):

Material	Layer depth	Volume (CY)	Truckloads (15 CY)
Quarry spalls (base)	12 in	9,341	~623
1.25" minus	4 in	3,082	~205
5/8" minus (surface)	2 in	1,588	~106
TOTAL IMPORT	18 in	14,011	~934

Combined export + import totals:

Activity	Volume (CY)	Truckloads
Export (topsoil)	14,011	~934 OUT
Import (aggregate)	14,011	~934 IN
TOTAL	28,022	~1,868

These figures do not include the construction of the PUD facility that include equipment delivery, concrete trucks, utility-installation traffic, or worker vehicles, and are therefore a conservative lower bound. Thus likely a figure of 3000 to 4000 truck trips is realistic.

B. Daily traffic intensity during the construction phase

Assuming a standard 15 CY dump truck and a defined earthwork window:

Schedule scenario	Days	Round-trip movements/day
Conservative earthwork window	60	~62
Aggressive earthwork window	30	~124

Either scenario represents a dramatic short-term increase over the ~85 daily vehicle trips disclosed in the checklist for the completed facility (Exhibit A, §B.14.e), and neither has been disclosed or analyzed.

C. Roadway and access impacts

The site is accessed from Kittitas Highway approximately 800 feet west of North Ferguson Road, and construction access will use Farmer Stakeholder's 30-foot easement corridor. The PUD attempted to "negotiate" an easement on a local driveway to the west of the parcel. This was unsuccessful, then somehow without public notification, the PUD constructed the current entrance from Kittitas Hwy.

Heavy truck traffic at the volumes above will increase pavement wear, create sight-distance and turning conflicts at the Kittitas Hwy access point, generate dust and vibration, and conflict with oversized agricultural equipment. No haul-route study, trip-distribution analysis, or intersection analysis has been provided.

D. Easement failure risk under construction loading

The shared 30-foot easement terminates in a chronically wet portion of Farmer Stakeholder's field. Repeated heavy truck loading on unimproved subgrade, combined with soil disturbance from nearby excavation and drainfield installation, is reasonably likely to cause rutting, compaction, and loss of functional access for agricultural equipment during and after construction.

E. Compounding impact pathway

The project creates a compounding, site-specific impact pathway that SEPA requires the County to evaluate: (1) large-scale topsoil removal and aggregate replacement; (2) a sustained, high-volume truck haul operation; (3) drainfield placement adjacent to a wet zone; (4) altered drainage and increased saturation along the easement; (5) degradation of the easement surface; and (6) loss of agricultural equipment access on Farmer Stakeholder's property. Each link in this chain is reasonably foreseeable; none is addressed in the checklist.

F. Applicable SEPA provisions

The absence of any construction-traffic analysis implicates WAC 197-11-060(4) (indirect and off-site impacts), WAC 197-11-335 (requirement of an adequate environmental checklist), and RCW 43.21C.030 (identification of probable significant impacts).

G. Minimum required mitigation

1. A construction traffic study addressing haul routes, trip frequency, peak movements, and Kittitas Hwy intersection safety.
2. An agricultural coordination plan with timing restrictions during harvest and equipment-priority access provisions.
3. Easement protection measures including all-weather surfacing, subgrade stabilization, and drainage improvements.
4. Seasonal hauling restrictions during wet/mud conditions.
5. On-site inspection and enforcement protocols with corrective action requirements.

VII. The Hydrologic Case Against This Site

A. Overview: seven independent water pathways, none analyzed

The proposed PUD headquarters creates at least seven independent water-related impact pathways on the subject parcel, and the SEPA record addresses none of them with any technical analysis:

> (1) a shallow and seasonally variable water table that is routinely within 12 inches of the ground surface.
>
> (2) 75 acre-feet of annual flood irrigation on the adjacent upgradient parcel, the equivalent of approximately 24.4 million gallons, which recharges the shallow aquifer directly beneath the project site.
>
> (3) a proposed on-site sewage drainfield on mapped somewhat-poorly-drained soils that include a Hydrologic Soil Group D unit with a Ksat of 0.00–0.06 in/hr;
>
> (4) a proposed Group B well drawing from the same shallow aquifer.
>
> (5) unquantified dust-suppression water on a 5.79-acre unpaved aggregate yard.
>
> (6) stormwater runoff from approximately 53.5% impervious coverage.
>
> (7) an agricultural irrigation ditch along both the east side of the shared easement and the west side of the parcel that the record does not even identify!

B. The water table is routinely at or near the ground surface

Farmer Stakeholder has farmed the parcel immediately north of the project site for more than six years. Based on direct, ongoing observation, the seasonal high-water table in this area routinely rises to within approximately 12 inches of the ground surface and frequently to less than 12 inches during both the winter dormant season and the May–September irrigation season. These are not isolated events; they are the normal hydrologic condition of the site.

The USDA Web Soil Survey data corroborates these observations. The Deedale clay loam unit (13.4%) is mapped with a seasonal high-water table at 12–19 inches, and the dominant Mitta ashy silt loam unit (86.6%) is mapped at 34–49 inches. But the USDA mapping describes

regional averages. Farmer Stakeholder's direct experience is that the actual water table is shallower than the Mitta mapping suggests, particularly during and immediately after irrigation cycles and in winter when evapotranspiration is minimal and the valley floor is recharged by precipitation and canal seepage.

The checklist (Exhibit A, §A.8) acknowledges that "monitoring wells" have been installed, but the monitoring well data itself the one data set that could establish the seasonal high groundwater elevation is not in the SEPA record. That omission is fatal to every other water-related conclusion, because the seasonal high-water table is the single variable from which vertical separation, drainfield feasibility, plume migration direction, and stormwater infiltration capacity are all derived.

C. Seventy-five acre-feet of flood irrigation on the upgradient parcel directly recharges the project site

Farmer Stakeholder holds a water right for 75 acre-feet of flood irrigation on the adjacent parcel to the north with approximately 24,430,000 gallons per irrigation season. Flood irrigation delivers water in excess of crop demand; the excess infiltrates the soil profile, moves laterally through the alluvium on the near-flat Kittitas Valley floor, and recharges the shallow aquifer. That recharge migrates downgradient which, on this site, means toward and beneath the PUD parcel. The chronically wet zone at the northern terminus of the shared 30-foot easement is the surface expression of that recharge.

This matters for every water-related impact. A drainfield that might marginally function with a water table at 34–49 inches (the Mitta mapping) will not function when the actual water table is elevated to within 12 inches by 75 acre-feet of upgradient flood irrigation. A Group B well drawing from the same shallow aquifer has a direct capture-zone interaction with the drainfield effluent plume. And stormwater detention that assumes infiltration into an unsaturated subsurface will fail when the subsurface is already saturated.

D. The drainfield cannot function on this site under these conditions

Washington's on-site sewage system rules at chapter 246-272A WAC are designed around a single premise: effluent must pass through an unsaturated zone of adequate depth before

reaching groundwater. The Washington Department of Health has stated: “One of the keys to proper functioning of a septic system is ensuring that the vertical separation between the bottom of the drainfield and the water table is large enough so that unsaturated conditions will be maintained even during wet seasons.” (DOH Publication 337-094.) When the water table rises into the drainfield, that unsaturated zone disappears, treatment ceases, and untreated effluent enters the groundwater.

On this site, the proposed drainfield is at the north end of the parcel (Exhibit E), directly adjacent to the wet zone and directly downgradient of 75 acre-feet of annual flood irrigation recharge. The Deedale component has a Ksat of 0.00–0.06 in/hr and a water table at 12–19 inches. Farmer Stakeholder’s direct observation is that the actual water table is frequently shallower than 12 inches. Under these conditions, the vertical separation required by WAC 246-272A-0230 cannot be maintained. This is not a design problem a better engineer can solve. It is a site-suitability problem.

E. Nonresidential source requirements ignored

WAC 246-272A-0230(2)(f)(ii) requires that for a nonresidential source, the designer must provide: (A) information demonstrating the sewage is not industrial wastewater; (B) information regarding sewage quality and identifying chemicals not found in residential sewage; and (C) a site-specific design providing residential-equivalent treatment. A PUD headquarters with a 10,200 sf. warehouse, a 5.79-acre equipment yard, transformer storage, and an emergency generator is plainly a nonresidential source. The record contains none of the three required demonstrations.

F. Design flow of 275 gpd is not credible

The checklist discloses 275 gpd for 14 employees (rising to 17), field crew, and up to 10 daily visitors—under 10 gpd per person, below DOH planning assumptions. The three 60,000-gallon fire suppression tanks (180,000 gallons total) further demonstrate that the 275 gpd figure does not capture the facility’s actual water demand; the Group B well at 275 gpd would take approximately 655 days to fill all three tanks.

G. The Group B well and adjacent domestic wells

The project proposes a new Group B well at the south end of the parcel. No information about its depth, casing, or zone of influence relative to adjacent private wells appears in the record. On a site where the shallow aquifer is recharged by 75 acre-feet of upgradient flood irrigation, the well's capture zone and the drainfield's effluent plume will interact in predictable but uncharacterized ways. No well-interference analysis has been performed.

H. The irrigation ditch alongside the easement

An irrigation ditch runs along the east side of the shared 30-foot easement. The SEPA record does not identify the ditch, describe any separation from the proposed paved surface, or explain where PUD stormwater and access-road runoff will go. Runoff directed into an active agricultural irrigation ditch would deliver petroleum residues, transformer-related compounds, de-icing materials, and herbicide residues to downstream farms, implicating RCW 90.48.020 (Water Pollution Control Act).

I. Dust suppression water on 5.79 acres of saturated ground

Large unpaved aggregate yards require dust suppression during the same May–September months when the adjacent field is receiving 75 acre-feet of flood irrigation. On soils that are already recharged to near-surface saturation, repeated application of dust-suppression water produces localized surface saturation, lateral subsurface movement along restrictive clay layers, and groundwater mounding beneath the yard. Where chemical palliatives (magnesium chloride, lignin sulfonate) are used, they are mobile in runoff and shallow subsurface flow. None of this is analyzed in the record.

J. Stormwater from 53.5% impervious coverage on saturated soils

The proposed stormwater detention pond is designed for quantity-based detention, not quality-based treatment. On a site where the water table is routinely within 12 inches of the surface, infiltration-based stormwater management is not a viable treatment pathway. Runoff that does not infiltrate will move laterally toward the wet zone at the easement terminus and the irrigation ditch. The record does not address this interaction.

K. Nitrogen loading in an Upper Yakima VSP watershed

The parcel lies within WRIA 39 (Upper Yakima), managed under the Voluntary Stewardship Program. WAC 246-272A-0230(2)(e)(i)(D) requires nitrogen contributions to be addressed where nitrogen is a contaminant of concern. The record does not address nitrogen loading from the drainfield. On a site already receiving nitrogen from 75 acre-feet of alfalfa-field irrigation return flow, adding a nonresidential drainfield nitrogen source without analysis is the cumulative loading impact the VSP framework exists to prevent.

L. The critical-areas contradiction

Checklist §B.8.h answers "N/A" to critical areas. The County's own staff map (Exhibit F) hatches the entire parcel with a critical areas overlay and maps a PSS1A wetland immediately northwest. Given Farmer Stakeholder's observation that the water table is routinely within 12 inches of the surface, portions of the project parcel itself may meet wetland hydrology criteria. This contradiction triggers the reporting obligations of KCC Title 17A.

M. The contaminant pathway: from yard to ditch to farm

The combination of repeated surface wetting, a large unpaved yard accumulating transformer oil residues, petroleum, hydraulic fluids, solvents, herbicides, and de-icing materials, and mapped somewhat-poorly-drained soils creates a foreseeable contaminant transport pathway: surface water picks up residues, the low-Ksat clay prevents downward infiltration, lateral flow carries dissolved constituents toward the yard perimeter and into the irrigation ditch, and from there into the downstream agricultural water system serving Farmer Stakeholder's alfalfa crop. Washington's Water Pollution Control Act, RCW 90.48, prohibits the discharge of polluting matter into waters of the state.

N. The site is not suitable for this development

The combination of conditions documented above a water table routinely within 12 inches of the surface; 75 acre-feet of annual flood irrigation recharging the shallow aquifer from the immediately upgradient parcel; Deedale clay loam with a Ksat of 0.00–0.06 in/hr; a drainfield adjacent to a wet zone that is the surface expression of the irrigation recharge; an unidentified irrigation ditch; a mapped PSS1A wetland; and a critical-areas overlay the checklist denies exists

is not a set of constraints that engineering can overcome. It is a set of constraints that tells the County the proposed use belongs on a different site. RCW 36.70A.177(1) directs counties to steer nonagricultural uses onto lands with poor soils. The USDA has classified this site as Prime farmland if irrigated the opposite of poor soils. The Washington Supreme Court has held that this County must protect water resources in land use decisions. Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144, 178 (2011).

O. Minimum required water-related analysis

1. A site-specific hydrogeologic report with monitoring well data covering at least one full irrigation season and one winter season, with continuous water-level monitoring.
2. Quantification of the irrigation recharge from Farmer Stakeholder's 75 acre-feet of annual flood irrigation, including a water balance demonstrating the contribution to shallow groundwater beneath the project site.
3. A drainfield design under the nonresidential source requirements of WAC 246-272A-0230(2)(f)(ii), with sewage quality characterization and vertical separation demonstration at actual seasonal high groundwater.
4. A nitrogen loading and fate-and-transport analysis for the Upper Yakima VSP watershed.
5. A plume migration analysis with piezometer data confirming effluent will not reach the wet zone, the ditch, or any adjacent well.
6. Increased horizontal separations under WAC 246-272A-0210(2) given shallow/saturated soils.
7. A well-interference analysis for the Group B well against adjacent private wells.
8. Identification of the irrigation ditch with top-of-bank survey and connection to downstream waters.
9. A stormwater quality analysis demonstrating no operational runoff enters the ditch, with Ecology 2019 Eastern WA Stormwater Manual compliance.
10. An operational water budget for dust suppression during the irrigation season.

11. A critical areas report under KCC Title 17A addressing the overlay, the PSS1A wetland, and potential wetland hydrology on the project parcel.
12. A hazardous materials inventory and SPCC-style containment plan with a contaminant-pathway analysis from yard to ditch to aquifer.

VIII. Fire Suppression Infrastructure, Hazardous Materials, and Catastrophic Fire Risk

A. The fire suppression tanks tell a story the checklist will not

The site plan (Exhibit E) confirms three 60,000-gallon fire suppression water storage tanks—180,000 gallons of dedicated fire water. The plan label reads "FIRE SUPPRESSION WATER STORAGE TANKS (3)," resolving the unresolved tank count from the applicant's March 19, 2026 transmittal email (Exhibit D). Under NFPA 22 Section 4.1, tank capacity must "reflect actual fire demand." A 6,300 sf office building with no flammable materials would not require 180,000 gallons of fire water. That volume is consistent with a facility storing transformer mineral oil (a Class IIIB combustible liquid under NFPA 30), diesel fuel, hydraulic fluids, and potentially PCB-containing transformer components. The fire suppression tank sizing directly contradicts the checklist's assertion at §B.7.a(3) that "no anticipated hazardous chemicals will be stored, used, or produced."

The math is dispositive. The Group B well at 275 gpd would take approximately 218 days to fill a single 60,000-gallon tank, and approximately 655 days—nearly 22 months—to fill all three. The well cannot be the operational source for the fire suppression system. There must be either an undisclosed water source or an undisclosed water demand, or both. The 275 gpd figure in the checklist is not credible in the presence of 180,000 gallons of dedicated fire storage.

B. The plausible fire hazard inventory

Normal operations at a PUD service yard of this type can reasonably be expected to involve: transformer mineral oil (200–500 gallons per unit, multiple units on site); PCB-containing transformer components from older field-recovered units (producing toxic dioxin and furan combustion byproducts); diesel fuel for the emergency generator and fleet vehicles; hydraulic fluids on bucket trucks and boom lifts; solvents and cleaning agents for electrical component maintenance; and herbicides for yard vegetation management. The record discloses none of these materials. Yet the fire suppression infrastructure presupposes their presence.

C. Fire risk to adjacent hay operations is catastrophic

Cured hay is among the most flammable agricultural products in existence. It ignites readily from sparks, embers, hot exhaust, electrical arc, or radiant heat; burns intensely; produces ember showers that propagate fire across wide areas; and once fully involved, cannot be extinguished. The site plan places transformer storage, diesel fuel infrastructure, a generator, and vehicle circulation immediately adjacent to Farmer Stakeholder's active hayfield across a 30-foot easement. Documented ignition sources at utility yards include transformer failures (arcing, oil ignition), catalytic converter contact with dry vegetation, electrical faults, and welding operations. Any of these, during the June–September haying window, could ignite cured hay in windrows or stacks on Farmer Stakeholder's field. The result would be catastrophic: the entire hay crop, equipment in the field, the alfalfa stand itself (two to three years to re-establish), and potentially Farmer Stakeholder's residence and short-term rental, all within the fire-spread zone driven by Kittitas Valley winds that routinely exceed 20 mph in summer.

D. The economic dimension

A single fire event during the haying season could destroy: the entire current-year hay crop representing the full year's farm revenue; haying equipment with a combined replacement value exceeding several hundred thousand dollars; the alfalfa stand itself, requiring two to three years of re-establishment; the short-term rental operation through direct damage or smoke-related booking losses; and the value and insurability of Farmer Stakeholder's property. The Washington Supreme Court has confirmed that off-site physical damage from an adjacent land use is actionable. Buchanan v. Simplot Feeders Ltd., 134 Wn.2d 673, 684 (1998).

E. Where does the fire suppression water go after a fire?

After a fire event, 180,000 gallons of potentially contaminated fire suppression water (mixed with transformer oil, diesel, and fire-retardant chemicals) must go somewhere. On a site with a water table within 12 inches of the surface, that water will enter the shallow aquifer, the irrigation ditch, and the downstream agricultural water system. The SEPA record contains no fire-water discharge plan. This creates a feedback loop with the water analysis in Section VII: the fire suppression infrastructure requires a water source the record cannot explain, and the fire

suppression water discharge after an event creates a contamination pathway into the same aquifer and ditch that Section VII already shows is critically compromised.

F. Required fire-related analysis

1. Full disclosure of the NFPA fire hazard classification that drives the tank sizing, with a complete combustible/flammable materials inventory.
2. Identification of the water source for the fire suppression system and its interaction with the Group B well and drainfield.
3. A fire-spread analysis addressing ignition probability and consequences including ember transport modeling for Kittitas Valley wind conditions.
4. A defensible-space plan with fire-resistant buffer between transformer/fuel storage and the hayfield.
5. A fire suppression water discharge plan demonstrating contaminated fire water will not enter the water table, the ditch, or downstream agricultural systems.
6. Coordination with Kittitas Valley Fire & Rescue (Fire District 2).
7. A revised checklist §B.7.a(3) truthfully disclosing all combustible and hazardous materials on site.

IX. Lighting Impacts and Absence of a Lighting Study

A. What the checklist actually says

Exhibit A, §B.11 is the only place in the record that addresses lighting. It contains three sentences:

(i) "There will be security lighting on the buildings and in the storage yard when it's dark outside"

(ii) "The lighting will comply with code requirements and should not significantly impact views. The light poles will utilize motion sensors to keep them at a lower level when not actively in use"

(iii) "Site and building lighting will comply with dark sky and other code requirements."

That is the entirety of the applicant's lighting analysis. There is no photometric plan, no fixture schedule, no pole-height specification, no BUG (Backlight-Uplight-Glare) rating, no correlated color temperature (CCT) commitment, no curfew or shutoff schedule, no shielding detail, no light-trespass calculation at the property line, and no identification of the "dark sky" code the applicant claims to comply with.

B. Kittitas County has no adopted dark-sky ordinance

Kittitas County Code Title 17 does not contain a parcel-level dark-sky or outdoor-lighting performance ordinance for the A-20 zone. The applicant's assertion that the project will "comply with dark sky and other code requirements" is therefore unanchored there is no specific County standard to which the bare assertion points, and the record contains no fixture schedule or photometric study against which compliance could later be measured. A commitment to comply with a non-existent standard is not mitigation.

C. The scale of lighting implied by the site plan is substantial

The site plan (Exhibit E) shows a 5.79-acre fenced materials and equipment yard, a parking lot serving 14–17 daily employees plus field crew, a warehouse loading area, a pump house, a well house, a fire-suppression tank farm, an emergency generator, and perimeter security fencing with

gates. Industrial electric-utility service yards of this type typically require pole-mounted area lighting on 25–30 ft poles at spacing sufficient to achieve insurance-rated minimum illuminance across the full yard, plus wall-pack lighting on each structure, plus gate and entry lighting. A reasonable planning-level estimate is 20–40 exterior fixtures across the site, none of which are disclosed in the record.

D. Motion-sensor lighting is not adequate mitigation

The checklist's reliance on motion sensors as the sole mitigation measure is insufficient for three reasons. First, motion-triggered lighting creates intermittent high-intensity flash conditions every time a deer, fox, owl, employee vehicle, or gust-blown tumbleweed crosses the detection zone arguably more disruptive to wildlife and nearby residents than low-level steady illumination. Second, utility insurance and NESC/OSHA security requirements for transformer and equipment storage typically mandate minimum continuous illumination levels during occupied hours and often overnight, which the checklist does not acknowledge. Third, motion sensors do nothing to address the underlying questions of fixture shielding, color temperature, pole height, and BUG rating.

E. Light trespass onto Farmer Stakeholder's property and short-term rental use

Farmer Stakeholder's residence and operating short-term rental property are located immediately east/north of the project site. Unshielded or partially shielded pole-mounted area lighting at 25–30 ft with industry-standard fixtures typically produces measurable illuminance (> 0.1 foot-candle the common light-trespass threshold) at property lines several hundred feet away. The record contains no calculation of property-line illuminance, no photometric isoline diagram, and no commitment to keep illuminance at the Farmer Stakeholder's property line below any specified threshold.

The short-term rental use is particularly relevant because "dark sky" and views of the Milky Way are a documented economic amenity for rural Kittitas Valley lodging. Degradation of the night sky over Farmer Stakeholder's lodging use is a direct, foreseeable, and economically measurable impact that has not been evaluated.

F. Impacts on wildlife and adjacent agriculture

The Kittitas Valley is a well-established migratory corridor for waterfowl and raptors. Unshielded nighttime lighting is a documented disorientation and mortality factor for nocturnal and crepuscular migrants, and is known to suppress pollinator activity in adjacent crop fields. The checklist (Exhibit A, §B.5) acknowledges hawks and songbirds on or near the site but does not connect that observation to the lighting discussion.

G. Compatibility with the Rural Working designation

The site carries a Rural Working land use designation (Exhibit H). One of the defining physical characteristics of Rural Working lands in Kittitas County is intact night sky conditions. Industrial-style security lighting across a multi-acre yard without a lighting plan establishing that fixture selection, shielding, mounting heights, CCT, and curfew practices will preserve that character is inconsistent with the comprehensive plan designation.

H. Minimum required lighting-related mitigation

1. A complete exterior lighting plan stamped by a qualified lighting designer or electrical engineer, including a fixture schedule with manufacturer, model, lumens, CCT, BUG rating, and mounting height.
2. An IES-format photometric study showing isoline contours at ground level and at the Farmer Stakeholder's property line, with a demonstrated trespass limit (e.g., ≤ 0.1 foot-candle at the property line).
3. Full-cutoff (IDA-compliant) fixtures only, with no uplight (U0 rating) and CCT ≤ 3000K.
4. A defined curfew (e.g., reduce to 30% after 10:00 p.m. and return to full only on detected activity near structures, not at the perimeter).
5. A commitment that perimeter yard lighting will be mounted and aimed to minimize spill onto adjacent agricultural fields and Farmer Stakeholder's residential and lodging uses.
6. A post-installation field verification by a qualified party, with results submitted to the County and to adjacent property owners.

I. Applicable SEPA provisions

The absence of any lighting analysis implicates WAC 197-11-444 (elements of the environment, including light and glare), WAC 197-11-060(4) (off-site and indirect impacts), and WAC 197-11-335 (requirement of a complete and accurate checklist). Issuing a DNS with no lighting plan on a multi-acre industrial utility yard adjacent to residential, lodging, and agricultural uses cannot survive the "hard look" standard articulated in Norway Hill.

X. Required Remedy: Determination of Significance and Environmental Impact Statement

A. Why the EIS pathway is the one that matters

Before setting out the required remedy, Farmer Stakeholder wishes to be direct about the procedural reality. The State Environmental Policy Act is, at its core, a disclosure statute. It does not, standing alone, authorize a local government to deny a project because a neighbor objects to it. But SEPA does contain one and only one pathway by which the County may exercise substantive authority to deny or materially condition a proposal on environmental grounds: RCW 43.21C.060. That statute provides, in relevant part: "In order to deny a proposal under this chapter, an agency must find that:

> (1) The proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter.
>
> (2) reasonable mitigation measures are insufficient to mitigate the identified impact.

Two features of that statutory language are dispositive for the remedy analysis. First, the significant adverse impacts must be "identified in a final or supplemental environmental impact statement." No EIS, no substantive denial authority.

A County responsible official faced with a bare checklist cannot invoke RCW 43.21C.060 no matter how troubling the record looks. Second, the statute requires a finding that reasonable mitigation is "insufficient" to address the identified impacts a finding that can only be made on a developed record, after a full alternatives analysis, and after the specific impacts have been characterized with enough precision to determine whether mitigation is feasible.

The practical consequence is that getting to a full EIS is not one remedy among many. It is the gateway to every outcome more stringent than a revised checklist.

B. The record already establishes probable significant adverse impact

The combined effect of the issues raised in Sections III through IX of this comment is that the record already contains substantial evidence uncontroverted in most instances of probable significant adverse impacts across multiple enumerated elements of the environment under WAC

197-11-444. Any one of the categories below is sufficient to require an EIS; together they make the case overwhelming.

- Land use conversion of 5.79 acres of USDA-classified Prime farmland (if irrigated) to an impervious industrial yard, without application of the Lewis County test or any alternatives analysis. Lewis County v. W. Wash. Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 502 (2006); RCW 36.70A.020(8), 36.70A.170, 36.70A.177(1).
- Water resources no hydrogeologic analysis despite a water table routinely within 12 inches of the surface, driven by 75 acre-feet of upgradient flood irrigation; no nonresidential-source drainfield characterization under WAC 246-272A-0230(2)(f)(ii); no plume migration analysis; no nitrogen loading analysis; and no stormwater quality analysis, on soils including a Hydrologic Soil Group D unit with Ksat of 0.00–0.06 in/hr. Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144, 178 (2011) ("counties must regulate to ensure land use is not inconsistent with available water resources").
- Fire risk—180,000 gallons of fire suppression water (three 60,000-gallon tanks) sized under NFPA 22 to "reflect actual fire demand" directly contradict the checklist's denial of hazardous materials. A transformer oil fire, diesel spill, or electrical fault during the haying season could ignite cured hay on the adjacent field, producing catastrophic crop, equipment, and structural losses. No fire-spread analysis, defensible-space plan, or fire-water discharge plan appears in the record.
- Agricultural activities impairment of statutorily protected Right to Farm activities including equipment movement on the shared easement, use of the adjacent irrigation ditch, and operation of haying machinery, all expressly included in RCW 7.48.310(1). Buchanan v. Simplot Feeders Ltd., 134 Wn.2d 673, 680 (1998).
- Transportation approximately 1,868 heavy truck trips associated with 14,000 cubic yards of topsoil export and 14,000 cubic yards of aggregate import, with no haul route, road-condition, or agricultural access analysis.

- Environmental health the implausible "no anticipated hazardous chemicals" answer at checklist §B.7.a(3) for an operating PUD service yard with transformer storage, an emergency diesel generator, and routine maintenance activity.
- Light and glare no photometric plan, no fixture schedule, no BUG ratings, no CCT, no light-trespass calculation, on a multi-acre industrial yard adjacent to residential, lodging, and agricultural uses.
- Critical areas the checklist's "N/A" answer at §B.8.h directly contradicts the County's own staff map, which hatches the entire parcel with a critical-areas overlay and depicts a PSS1A palustrine scrub-shrub wetland immediately northwest of the site.
- Cumulative and indirect impacts no analysis of how conversion of this parcel interacts with other development pressure on A-20 agricultural land in the Upper Yakima basin, and no analysis of how the project's individual impacts compound each other.
- Greenspace, aesthetics, and Rural Working compatibility—the site plan allocates zero acres of the 9.65-acre parcel to designed greenspace, landscape buffers, working agriculture, or native vegetation. WAC 197-11-444 identifies land use, plants, animals, aesthetics, and recreation as enumerated elements of the environment, and the Kittitas County Comprehensive Plan designates this parcel "Rural Working." A site with zero greenspace cannot be characterized as having no probable significant adverse impact on these elements, and KCC 17.60A's conditional-use compatibility findings cannot be made on a site plan that contains no landscape buffers, no internal screening, and no site design features mitigating the contrast with the surrounding agricultural landscape.

C. A Mitigated DNS cannot cure these deficiencies

The lead agency may be tempted to issue a Mitigated Determination of Non-Significance under WAC 197-11-350 rather than a full Determination of Significance. That option is available only where the proponent agrees to mitigation measures that reduce the probable impacts below the significance threshold, and only where the mitigation is sufficiently defined and enforceable at the time of the threshold determination.

Neither condition can be met on this record. The impacts have not been characterized with enough precision to know whether any given mitigation measure would be sufficient, because

the baseline is unknown. Several impact categories the Prime farmland conversion, the Deedale clay loam drainfield suitability, the interaction with the adjacent irrigation ditch are not amenable to mitigation short of relocating the use or radically redesigning the site.

Dust control and landscaping cannot mitigate the loss of Prime farmland under RCW 36.70A.177(1). The record contains no alternatives analysis, which means the County has no basis to conclude that any proposed mitigation is the best available. And Right to Farm impacts cannot be mitigated in the conventional SEPA sense because the protected agricultural activities are already legally presumed reasonable under RCW 7.48.305. What the record requires is not mitigation but an alternatives analysis.

An MDNS on this record would substitute ad-hoc promises for the disciplined analysis SEPA requires and would leave the County without the substantive authority it would otherwise gain through a completed EIS. It is the worst of both procedural worlds.

D. Required scope of the EIS

An EIS prepared in response to this comment must, at a minimum, include the following content. The final scope should be fixed through a formal scoping process under WAC 197-11-408 with an opportunity for written comment by affected property owners.

- A complete and corrected project description fixing all design elements that were still in flux when the application was deemed complete, including the final number and volume of fire suppression tanks, the final impervious coverage, and the final fence/pavement geometry at the easement corridor.
- A site-specific hydrogeologic report including monitoring well data spanning at least one full irrigation season, seasonal high groundwater characterization, hydraulic conductivity testing, and a plume migration analysis appropriate to the mapped Mitta and Deedale soils.
- A drainfield design prepared under the nonresidential source requirements of WAC 246-272A-0230(2)(f)(ii), with a full sewage quality characterization and chemical inventory.
- A nitrogen loading and fate-and-transport analysis appropriate to the Upper Yakima VSP watershed under WAC 246-272A-0230(2)(e)(i)(D).

- A critical-areas report under KCC Title 17A addressing the hatched overlay on Exhibit F and the nearby mapped PSS1A wetland.
- A soils and agricultural resource analysis applying the Lewis County test, disclosing the USDA “Prime farmland if irrigated” classification, and specifically addressing the GMA directive at RCW 36.70A.177(1) to steer nonagricultural uses onto lands with poor soils.
- A construction traffic and haul route analysis covering the approximately 14,000 cubic yards of earthwork export, 14,000 cubic yards of aggregate import, and the associated 1,868 heavy truck trips.
- An operational water use analysis including dust suppression demand, water source, any chemical palliatives, and interaction with the proposed Group B well and adjacent private wells.
- A hazardous materials and contaminant pathways analysis covering transformer mineral oil, petroleum fuels, hydraulic fluids, solvents, herbicides, and winter maintenance materials, with an SPCC-style containment plan.
- A stormwater quality analysis (not just a quantity-based detention design) demonstrating compliance with Ecology’s 2019 Stormwater Management Manual for Eastern Washington and demonstrating that no operational runoff will enter the adjacent irrigation ditch.
- A complete exterior lighting plan with photometric study, BUG ratings, CCT, light-trespass calculations, and an enforceable commitment to a specific dark-sky-compatible design standard.
- A turning-movement analysis using AASHTO design vehicle envelopes for the oversized agricultural equipment that uses the shared easement; and
- A cumulative impacts analysis addressing conversion pressure on A-20 agricultural lands in the vicinity and the interaction among impacts within the proposal itself.
- Full disclosure of the NFPA fire hazard classification driving the 180,000-gallon fire suppression tank sizing (three 60,000-gallon tanks), with a complete combustible and flammable materials inventory reconciled against the checklist’s “no anticipated hazardous chemicals” answer.

- A fire-spread analysis addressing the probability and consequences of an ignition event propagating to adjacent cured hay, including ember transport modeling for Kittitas Valley wind conditions.
- A fire suppression water discharge plan demonstrating that contaminated fire water will not enter the shallow aquifer, the irrigation ditch, or downstream agricultural water systems.
- Quantification of the 75 acre-feet annual flood irrigation recharge from the upgradient parcel and its effect on the seasonal high-water table, drainfield vertical separation, and stormwater infiltration capacity on the project site.
- A complete and dimensioned greenspace and landscape plan disclosing every planted area, the species composition, the maintenance and irrigation commitments, and the percentage of the parcel allocated to designed greenspace.
- A landscape buffer plan along the eastern property line adjacent to Farmer Stakeholder's working agricultural parcel, providing visual screening, dust interception, and pollinator habitat.
- A visual impact analysis with photo simulations from adjacent residential, lodging, and agricultural vantage points, including views from Farmer Stakeholder's residence and short-term rental.
- A wildlife habitat assessment quantifying the existing habitat function of the parcel and the loss associated with conversion to industrial use.

E. Alternatives the EIS must analyze

Under WAC 197-11-440(5), an EIS must evaluate reasonable alternatives to the proposed action, including the no-action alternative. At a minimum, the EIS for this proposal must analyze:

> (1) the no-action alternative, which is the only alternative that preserves the Prime farmland in its current productive use.
>
> (2) alternative sites on poor soils under RCW 36.70A.177(1), with a meaningful search for feasible alternative parcels in Kittitas County that do not require conversion of Prime farmland.

(3) a reduced-footprint design on the current site, including whether the gravel yard can be eliminated or substantially reduced.

(4) a redesigned easement interface preserving the full 30-foot agricultural access.

(5) phased construction with protected agricultural windows.

F. Ranked remedies: most stringent to least stringent

Farmer Stakeholder's primary and principal request is Remedy 1 below. The remaining remedies are set out in descending order of stringency so that the hearing examiner has a complete picture of what the law permits on these facts.

Tier 1 The strongest outcomes

Remedy 1. Determination of Significance, full EIS, and substantive denial under RCW 43.21C.060.

The lead agency withdraws the DNS, issues a Determination of Significance under WAC 197-11-360, prepares a full Environmental Impact Statement under WAC 197-11-400 through 197-11-448, and upon completion of the Final EIS finds under RCW 43.21C.060 that the proposal would result in significant adverse impacts that cannot be reasonably mitigated. The County then denies the underlying conditional use permit, identifying the substantive policies in KCC 17.74 (Right to Farm), KCC Title 17A (Critical Areas), the comprehensive plan's Rural Working designation, and the A-20 zoning districts of KCC Title 17 as the bases for denial. This is the most stringent outcome SEPA authorizes. Washington tribunals have in fact denied major industrial proposals on this pathway. See Millennium Bulk Terminals-Longview, LLC v. Cowlitz County (Shorelines Hearings Board 2017) (affirming a Hearing Examiner's denial of permits for a coal export terminal under SEPA substantive authority after a Final EIS identified significant unmitigable environmental impacts).

Remedy 2. Determination of Significance, full EIS, and denial of the conditional use permit on independent A-20 zoning grounds.

The lead agency requires an EIS, and the County independently denies the CUP on the ground that an industrial utility service yard is not a permitted or conditional use in the A-20 zone under

the reasoning of Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014), where the Washington Supreme Court held that the same County could not permit rock crushing as a conditional use in A-20 because that use was not enumerated in the applicable zoning code. The same analytical approach applies to an industrial utility yard. This pathway does not depend on RCW 43.21C.060, but the EIS record still drives the factual basis for the zoning analysis and the KCC 17.60A compatibility findings.

Remedy 3. Determination of Significance, full EIS, and required relocation under RCW 36.70A.177(1).

The EIS alternatives analysis identifies a feasible alternative site on land that is not classified by the USDA as Prime farmland or Farmland of statewide importance. On the strength of that analysis, the County directs the PUD to pursue the alternative site rather than the current Prime farmland parcel, consistent with the GMA directive that nonagricultural uses be steered toward lands with poor soils. This is a de facto denial of the current proposal but preserves the PUD's ability to construct its headquarters on a different parcel in the same County.

G. Summary of what Farmer Stakeholder requests

Farmer Stakeholder respectfully requests that the hearing examiner:

1. Find that the record contains substantial evidence of probable significant adverse environmental impact across multiple enumerated elements of the environment under WAC 197-11-444;
2. Find that the DNS issued in this matter is clearly erroneous under the Norway Hill standard and inconsistent with Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014), Kittitas County v. Eastern Washington Growth Management Hearings Bd., 172 Wn.2d 144 (2011), and King County v. Friends of Sammamish Valley, 3 Wn.3d 861 (2024);
3. Reverse the DNS and direct the lead agency to issue a Determination of Significance under WAC 197-11-360;

4. Direct the lead agency to prepare a full Environmental Impact Statement consistent with the scope set out in Section X.D above, through a formal scoping process under WAC 197-11-408;
5. Award Farmer Stakeholder and neighboring stakeholders such other and further relief as justice requires.

XI. Conclusion

The SEPA review for SE-26-00003 rests on a misstated factual baseline, an incomplete project description, and the omission of substantial site-specific impacts. Those omissions include the conversion of USDA-classified Prime farmland (if irrigated) and farmland of statewide importance to an industrial utility service yard on land that the Growth Management Act directs counties to conserve rather than convert (Section IV.C and III.E); a site that is hydrologically unsuitable for development, with a water table routinely within 12 inches of the surface recharged by 75 acre-feet of upgradient flood irrigation, mapped Deedale clay loam with a Ksat of 0.00–0.06 in/hr, and a drainfield that cannot maintain the vertical separation required by chapter 246-272A WAC (Section VII); fire suppression infrastructure sized for 180,000 gallons (three 60,000-gallon tanks) that contradicts the checklist's denial of hazardous materials and creates catastrophic fire risk to adjacent cured hay, residences, and the irrigation water system (Section VIII); approximately 1,868 heavy truck trips associated with topsoil export and aggregate import (Section VI); a set of operational conflicts with active agriculture dust, drift, noxious weeds, shared-easement access, wildfire risk, and stormwater commingling that Kittitas County's own Right to Farm ordinance (KCC 17.74) and conditional-use compatibility standards (KCC 17.60A) require the County to address (Section V); a site plan that allocates zero acres of the 9.65-acre parcel to designed greenspace, working agriculture, or native vegetation, in direct conflict with the comprehensive plan's "Rural Working" designation and the GMA's open-space goals at RCW 36.70A.020(8)–(10) (Section V.L); and a multi-acre industrial security-lighting installation with no lighting plan, no photometric study, and no enforceable commitment to any specific standard (Section IX). A Determination of Non-Significance issued on this record would be clearly erroneous under Norway Hill, inconsistent with the SEPA "hard look" obligation reaffirmed in King County v. Friends of Sammamish Valley, and contrary to the result reached by the Washington Supreme Court in Ellensburg Cement Products, Inc. v. Kittitas County, 179

Wn.2d 737 (2014), on closely analogous facts, and inconsistent with the Court's earlier direction to this same County in Kittitas County v. Eastern Washington Growth Management Hearings Board, 172 Wn.2d 144 (2011), that Kittitas County must protect agricultural land and water resources in its land use decisions.

Appendix A Case Law and Authorities

Norway Hill Preservation & Protection Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976)

Leading Washington Supreme Court decision on judicial review of SEPA negative threshold determinations. The Court adopted the "clearly erroneous" standard of review, holding that a reviewing court may set aside a DNS where, on the entire record, the court is left with the definite and firm conviction that a mistake has been committed. The Court emphasized that SEPA's policies of full disclosure and consideration of environmental values require actual consideration of environmental factors before a negative threshold determination can be made. Directly supports Sections I, IV.A, VII, and VIII of this comment.

Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014)

Washington Supreme Court decision reversing a Kittitas County SEPA Determination of Non-Significance and the underlying conditional use permit for a gravel extraction and rock-crushing operation on A-20 agricultural-zoned land in Kittitas County. The Court held that the County's SEPA comment procedure violated state law by denying an open-record hearing, and that the proposed rock-crushing use was not a permitted or conditional use in the A-20 zone because it was not listed in the applicable zoning code. The case is directly on point for this comment because it involves (i) the same court, (ii) the same county, (iii) the same A-20 agricultural zone, (iv) a gravel-related industrial use on farmland, and (v) a DNS that the Washington Supreme Court concluded was not supported by a meaningful SEPA review. Farmer Stakeholder cites Ellensburg Cement Products in Sections I, IV, VII, VIII, and XI of this comment.

Kittitas County v. Eastern Washington Growth Management Hearings Board, 172 Wn.2d 144 (2011)

Washington Supreme Court decision affirming the Growth Management Hearings Board's findings that Kittitas County violated the GMA by failing to: develop the required written record explaining its rural element; include provisions in its comprehensive plan that protect rural areas; provide for a variety of rural densities; protect agricultural land; and protect water resources. The Court specifically held that "counties must regulate to ensure land use is not inconsistent with

available water resources" and must "plan for land use in a manner that is consistent with the laws regarding protection of water resources." 172 Wn.2d at 178, 180. The case is directly relevant here because it establishes that Kittitas County has been previously found noncompliant on the very obligations protection of agricultural land and water resources in an irrigation-dominated watershed that this comment raises. Cited in Sections I, IV.C, and VII.

Lewis County v. Western Washington Growth Management Hearings Board, 157 Wn.2d 488 (2006)

Washington Supreme Court decision establishing the three-part test for identifying agricultural land of long-term commercial significance under the GMA. Agricultural land is land that is (a) not already characterized by urban growth, (b) primarily devoted to the commercial production of agricultural products or capable of being used for such production based on land characteristics, and (c) of long-term commercial significance "as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses." 157 Wn.2d at 502. The Lewis County test is directly relevant here because the USDA "Prime farmland if irrigated" classification on the dominant soil map unit goes to exactly the factors the test requires the County to evaluate. Cited in Section IV.C.

King County v. Friends of Sammamish Valley, 3 Wn.3d 861 (2024)

Washington Supreme Court decision holding that a King County ordinance relaxing development restrictions on winery/brewery/distillery uses in agricultural and rural areas violated both the GMA and SEPA. The Court held that the ordinance violated SEPA because the environmental checklist relied on the existence of other regulatory programs to provide environmental protection and failed to identify any protection or impact mitigation provided by the ordinance itself. The holding is directly on point here because the checklist answers impact questions on agricultural lands with blanket "no impact" statements rather than analyzing the proposal's own impacts. Cited in Sections I, IV.C, and XI.

RCW 36.70A.020(8) GMA planning goal: natural resource industries

The Legislature directs counties to "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries" and to "encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses." Cited in Section IV.C.

RCW 36.70A.170 Designation of natural resource lands

Requires counties to designate "agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." Cited in Section IV.C.

RCW 36.70A.177(1) Innovative zoning techniques and accessory uses

Provides that counties "should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes." This is the direct statutory directive that an industrial utility yard ought to have been sited somewhere other than Prime farmland. The Washington Supreme Court has applied this section to strike down zoning techniques that allow nonfarm uses on designated agricultural lands. See Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144 (2011); King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields), 142 Wn.2d 543 (2000). Cited in Section IV.C.

WAC 365-190-050 Agricultural resource lands classification

Department of Commerce guidelines for counties classifying agricultural lands. Subsection (1) identifies soil type (including USDA prime farmland classifications), proximity to population areas, and vulnerability to more intense land uses as factors relevant to the long-term commercial significance determination. Cited in Section IV.C.

Indian Trail Property Owners Ass'n v. City of Spokane, 76 Wn. App. 430, 886 P.2d 209 (1994)

Court of Comments decision reviewing a mitigated DNS for a shopping center expansion. The court ultimately upheld the MDNS, but in doing so reaffirmed the "clearly erroneous" standard from Norway Hill and made clear that the responsible official must identify those aspects of a proposal that could result in significant adverse impacts and set forth adequate mitigation. The case is cited here for its articulation of the analytical obligations of the lead agency, not as a case in which an MDNS was set aside. Cited in Sections IV.A and IV.D.

WAC 197-11-060 Content of environmental review

Requires agencies to consider direct, indirect, and cumulative impacts, including off-site impacts, and to evaluate the full scope of a proposal. Cited throughout Section IV and Section V.

WAC 197-11-315 and WAC 197-11-335 Environmental checklist

Require a complete and accurate environmental checklist as the foundation for any threshold determination. Relevant to the unresolved-proposal argument in Section IV.B and the construction-traffic argument in Section VI.F.

WAC 197-11-355 Optional DNS process

Permits combined notice only where the lead agency has sufficient information to reasonably conclude there will be no probable significant adverse impacts. Relevant to Section IV.G.

RCW 43.21C.030 SEPA substantive requirements

Requires identification of probable significant adverse environmental impacts. Relevant to Sections IV and V.

Kittitas County Code Title 17 Zoning (A-20 Agriculture)

Governs permitted uses, compatibility findings, and development standards in the Agriculture 20 zone. Relevant to the agricultural-conversion argument in Section IV.C.

KCC Chapter 17.74 Right to Farm for the Protection of Agricultural Activities

Kittitas County's Right to Farm ordinance expressly declares that "Agriculture has priority in matters dealing with conflicting land uses in agricultural areas" and that properly conducted agricultural activity "shall not be limited as to hours of the day nor days of the week." KCC 17.74.030. The ordinance's disclosure statement further warns purchasers of land near agricultural operations of the inconveniences inherent in farm operations, including noise, odors, dust, smoke, insects, machinery operation, manure handling, and chemical application. This establishes the baseline that the PUD must accept existing agricultural operations as they are which in turn requires the SEPA record to disclose and analyze, rather than ignore, the full operational envelope of those operations. Cited in Section V.

KCC Chapter 17.60A Conditional Uses

KCC 17.60A authorizes the County to impose "mitigation measures to effectively reduce the potential for land use conflicts with agricultural and resource lands, such as: landscape buffers, special setbacks, screening, and/or site design using physical features" and requires findings that a proposed conditional use "will ensure compatibility with existing neighboring land uses," "is consistent with the intent and character of the zoning district in which it is located," and "will mitigate material impacts of the development." To the extent the PUD use relies on a conditional use pathway in the A-20 zone, the SEPA record must support those findings. Cited in Sections V.J and IX.

RCW 7.48.305 Washington State Right to Farm Act

The state Right to Farm Act provides that agricultural activities consistent with good agricultural practices and established prior to surrounding nonagricultural and nonforestry activities are presumed not to be a nuisance. The statute provides the legal framework within which KCC 17.74 operates and reinforces the conclusion that the SEPA record must anticipate, rather than suppress, the full range of lawful farm operations on adjacent parcels. Cited in Section V.

WAC 197-11-444 List of elements of the environment

Identifies the elements of the environment that must be considered in SEPA review, including light and glare, noise, aesthetics, agricultural crops, and animals. The absence of any lighting analysis in the checklist fails to address a listed element. Cited in Sections VIII and IX.

Chapter 246-272A WAC On-Site Sewage Systems

Washington's on-site sewage system rules. Relevant provisions cited in this comment include: WAC 246-272A-0210 (horizontal separations and authority of the local health officer to increase them where conditions indicate a greater potential for contamination, including excessively permeable soils, unconfined aquifers, and shallow or saturated soils); WAC 246-272A-0230 (design requirements, including nonresidential source requirements at subsection (2)(f)(ii) and nitrogen loading at subsection (2)(e)(i)(D)); and WAC 246-272A-0234 (soil dispersal component design and hydraulic loading rates by soil type). Cited throughout Section VII.

Kittitas County Code Title 17A Critical Areas

Kittitas County's critical areas ordinance governs wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, and other regulated features. Any development within a mapped critical area or its buffer must comply with the reporting and performance standards of Title 17A. The checklist's "N/A" answer on critical-area status conflicts with the County's own mapping of the subject parcel and triggers the reporting obligations of KCC 17A.01.080. Cited in Section VII.L.

Appendix B Construction Haul Calculations and Assumptions

B.1 Base assumptions

- Total parcel area: 9.65 acres (Exhibit A).
- Gravel yard area from Exhibit E: approximately 5.79 acres = 252,200 sf.
- Excavation depth: 18 inches (1.5 ft), based on site-specific observation on Farmer Stakeholder's adjacent parcel where topsoil overlies a clay layer at approximately that depth.
- Standard dump truck capacity: 15 CY (mid-range, defensible).
- Layer assumption for the replacement structural section totaling 18 in: 12 in quarry spalls, 4 in 1.25" minus, 2 in 5/8" minus.

B.2 Topsoil excavation volume

252,200 sf × 1.5 ft = 378,300 cf ÷ 27 = 14,011 CY ≈ 14,000 CY of topsoil export.

At 15 CY per truck: 14,011 ÷ 15 ≈ 934 outbound loads.

B.3 Aggregate import volumes

- Quarry spalls: 252,200 × 1.00 ft = 252,200 cf ÷ 27 = 9,341 CY ≈ 623 loads.
- 1.25" minus: 252,200 × 0.33 ft = 83,226 cf ÷ 27 = 3,082 CY ≈ 205 loads.
- 5/8" minus: 252,200 × 0.17 ft = 42,874 cf ÷ 27 = 1,588 CY ≈ 106 loads.
- Total import: ≈ 14,011 CY ≈ 934 inbound loads.

B.4 Combined trip totals

Export (~934 out) + Import (~934 in) ≈ 1,868 one-way heavy truck trips, or ~3,736 individual truck movements when empty return trips are counted.

B.5 Daily intensity

- 60-day earthwork window: 1,868 ÷ 60 ≈ 31 one-way trips per day (~62 round-trip movements per day).
- 30-day earthwork window: 1,868 ÷ 30 ≈ 62 one-way trips per day (~124 round-trip movements per day).

B.6 Exclusions

These figures do not include equipment mobilization, concrete trucks, utility-installation traffic, fire tank and building material deliveries, or worker vehicles, and therefore represent a conservative lower bound on construction-phase trip generation.

B.7 Caveats

Volumes are planning-level estimates based on the site plan in Exhibit E and the 18-inch topsoil observation on Farmer Stakeholder's adjacent parcel. Actual cut and fill quantities should be confirmed by a project-specific earthwork and haul analysis the preparation of which is itself part of the requested SEPA mitigation. The applicant's own checklist (Exhibit A, §B.1.e) estimates only ~1,513 CY of building-footprint cut and ~6,995 CY of site fill, neither of which accounts for the full-depth excavation and replacement of the gravel yard area.

Appendix C Lighting Impact Assessment Checklist

The following is the minimum information that a complete SEPA lighting analysis for this project should contain. None of the items below are addressed in the current checklist (Exhibit A, §B.11).

C.1 Fixture-level documentation

- Full exterior fixture schedule (manufacturer, model, wattage, lumens, CCT, BUG rating, mounting height, aiming angle).
- Manufacturer photometric (.ies) files for each fixture type.
- Confirmation that all fixtures are full-cutoff (U0 uplight rating) and factory-fixed at ≤ 3000K CCT.

C.2 Site-level photometric study

- Point-by-point illuminance plot at ground level across the site, on a 10 ft grid.
- Isoline contours showing illuminance at property lines, including Farmer Stakeholder's shared boundary.
- Demonstrated light trespass ≤ 0.1 foot-candle at the property line (commonly accepted rural standard).
- Maximum-to-minimum uniformity ratios for the parking lot and yard.

C.3 Operational controls

- Defined curfew schedule with automated (not manual) controls.
- Clear statement of which fixtures operate all night, which reduce after curfew, and which are motion-activated only.
- Confirmation that perimeter security lighting does not rely on sustained full output along fencelines adjacent to agricultural and residential uses.

C.4 Impacts on adjacent receptors

- Identification of nearest sensitive receptors: Farmer Stakeholder's residence, Farmer Stakeholder's short-term rental use, adjacent agricultural fields, and Kittitas Valley migratory bird corridor.
- Assessment of skyglow contribution from the cumulative installed lumens.
- Mitigation commitments enforceable as SEPA conditions (e.g., fixture lockouts, shielding retrofits, field verification).

C.5 Post-installation verification

- Requirement for field-measured illuminance at the Farmer Stakeholder's property line within 30 days of energization.
- Corrective-action protocol if measured values exceed design targets.
- Ongoing monitoring or complaint-response procedure.

C.6 Why this matters for the threshold determination

A DNS presupposes that the agency has enough information to conclude there are no probable significant adverse impacts. On lighting, the current record contains no information at all only bare assurances. The County cannot reach a reasoned no-significance conclusion on an element of the environment that has not been studied. That is the definition of a record that fails the Norway Hill "hard look" standard.

Appendix D Drainfield and Hydrogeologic Review Checklist

The following is the minimum information a complete SEPA drainfield and hydrogeologic analysis for this project should contain. None of the items below is presently in the record.

D.1 Design basis

- Design flow calculation with per-person, fixture-count, and peaking factor assumptions disclosed.
- Nonresidential source characterization per WAC 246-272A-0230(2)(f)(ii), including a chemical inventory and confirmation that sewage is not industrial wastewater.
- Identification of any shop sinks, floor drains, equipment wash water, or other nonresidential inputs and their treatment pathway.

D.2 Soil and hydraulic characterization

- Soil type classification (Types 1–6) under WAC 246-272A for the infiltrative zone.
- Hydraulic loading rate per WAC 246-272A-0234 Table VIII, with absorption area calculation.
- Cross-section showing the fine-textured cap, the dense gravel contact at 4.5–16.5 ft, and the proposed drainfield elevation.

D.3 Groundwater

- Seasonal high groundwater elevation documented from monitoring wells over at least one full irrigation season.
- Vertical separation demonstration per WAC 246-272A-0230 Table VI for the selected treatment level and method of distribution.
- Statement by the local health officer on whether horizontal separations should be increased under WAC 246-272A-0210(2).

D.4 Plume migration and off-site impacts

- Hydraulic conductivity test results for the fine-textured cap and the top of the gravel layer.
- Piezometer network data or equivalent characterization of the local water-table surface.
- Plume migration analysis showing that effluent will not reach the chronically wet zone on Farmer Stakeholder's parcel or any adjacent domestic well.

D.5 Nitrogen and water quality

- Nitrogen loading analysis appropriate to an Upper Yakima VSP watershed, with fate-and-transport modeling to the nearest receiving water.
- Statement of whether nitrogen has been identified as a contaminant of concern in the local management plan under WAC 246-272A-0015.

D.6 Critical areas

- Critical areas report under KCC Title 17A addressing the hatched overlay on Exhibit F and the nearby PSS1A wetland.
- Confirmation that the checklist's "N/A" answer at §B.8.h has been corrected.

D.7 Well coordination

- Location, depth, casing, and zone-of-influence information for the proposed Group B well.
- Inventory of adjacent private wells within 500 feet and confirmation that the drainfield lies outside their capture zones.

Closing Summary: Five Grounds That Place This Project in Legal Limbo

Each of the five issues below is, independently, sufficient to require the County to reverse the DNS, issue a Determination of Significance, and prepare a full Environmental Impact Statement. Together they make the case unavoidable.

- Conversion of USDA-classified Prime farmland to an industrial utility yard directly contravenes the Growth Management Act's directive at RCW 36.70A.177(1) that counties "should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes," and the resulting site plan allocates zero acres to designed greenspace, working agriculture, or native vegetation—the opposite of the comprehensive plan's "Rural Working" designation. The Washington Supreme Court has made clear that the three-part test for agricultural land of long-term commercial significance turns on "soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses," and the USDA mapping speaks directly to every one of those factors. Lewis County v. W. Wash. Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 502 (2006).
- An industrial utility service yard is not enumerated as a permitted or conditional use in the A-20 zone under KCC Title 17, and the Washington Supreme Court has already reversed a Kittitas County DNS and CUP for an industrial gravel and rock-crushing use in this same A-20 zone because the use was not listed in the applicable zoning code. The same analytical approach forecloses the present proposal, independent of any SEPA substantive-authority question. Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014).
- The checklist contains no hydrogeologic analysis despite a water table that Farmer Stakeholder's direct observation confirms is routinely within 12 inches of the surface, driven by 75 acre-feet (approximately 24.4 million gallons) of annual flood irrigation on the immediately upgradient parcel. The mapped Deedale clay loam has a Ksat of 0.00–0.06 in/hr effectively impermeable and no nonresidential-source drainfield characterization under WAC 246-272A-0230(2)(f)(ii) appears in the record. The

Washington Supreme Court has held that counties violate the GMA when they fail to protect water resources in land use decisions, and that "counties must regulate to ensure land use is not inconsistent with available water resources." Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144, 178 (2011).

- The checklist answers critical impact questions on agricultural lands, on hazardous materials, and on critical areas with blanket "no impact" or "N/A" assertions that contradict both the County's own staff mapping and the applicant's own engineering: the "no anticipated hazardous chemicals" answer at §B.7.a(3) cannot be reconciled with 180,000 gallons of dedicated fire suppression water (three 60,000-gallon tanks) sized under NFPA 22 to "reflect actual fire demand." The Washington Supreme Court has recently and unambiguously held that a local government cannot satisfy SEPA on actions affecting designated agricultural land by relying on the existence of other regulatory programs or on conclusory statements; it must actually analyze, rather than assume away, the impacts. King County v. Friends of Sammamish Valley, 3 Wn.3d 861 (2024).
- The proposed site plan narrows Farmer Stakeholder's recorded 30-foot agricultural easement to a 25-foot paved strip pinched against a rigid security fence at the sharp northeast corner, fails to address an adjacent irrigation ditch that RCW 7.48.310(1) expressly identifies as part of a protected "agricultural activity," and impairs active haying operations that meet every prong of the Right to Farm reasonableness test. Washington courts prohibit actions by the servient estate that "make it more difficult to use an easement . . . unless justified by the needs of the servient estate," and the record contains no analysis of the servient estate's actual needs or of any design alternative that would accommodate them. Zonnebloem, LLC v. Blue Bay Holdings, LLC, 200 Wn. App. 178, 184 (2017); Buchanan v. Simplot Feeders Ltd., 134 Wn.2d 673, 680 (1998); Thompson v. Smith, 59 Wn.2d 397, 408–09 (1962).

Taken together, these five grounds do more than identify defects in a single environmental checklist. They describe a proposal that is inconsistent with Washington's Growth Management Act, with Kittitas County's own A-20 zoning, with the on-site sewage system rules at chapter 246-272A WAC, with the critical areas ordinance at KCC Title 17A, with the Right to Farm Act at RCW 7.48.300–.310, and with the common-law rules governing interference with an

agricultural easement. The law provides the County with a clear path: withdraw the DNS, issue a Determination of Significance, and prepare a full Environmental Impact Statement. On the record as it stands, that is the only path consistent with Washington's SEPA, GMA, water, farmland-protection, and easement authorities.

A Public Response Comment on the Proposed Kittitas PUD #1 Headquarters SE-26-00003

Comment Deadline: Friday, April 18, 2026 at 5:00 PM

Commissioners, I appreciate your continued engagement. Your public responses to community questions have helpfully clarified several matters and in doing so, have strengthened the case for an Environmental Impact Statement (EIS) or at the least a Determination of Significance rather than a DNS.

On the Siting Study A Document That Should Be in the SEPA Record:

In response to the Facebook community questions, the PUD confirmed that a siting study was completed by an outside consultant prior to purchasing the Kittitas Highway parcel. This is an important admission. A consultant-prepared siting study evaluating this parcel against alternatives is precisely the kind of document that belongs in the SEPA administrative record not behind a public records request requiring in-person submission before Friday's comment deadline. WAC 197-11-335 requires the lead agency to ensure that relevant environmental documents are part of the record available for public review during the comment period. A siting analysis that informed the selection of Prime Farmland over alternative sites is directly relevant to the alternatives analysis SEPA requires. The fact that this study exists, was relied upon, and is not in the public record is itself a procedural deficiency. I formally request that the siting study be entered into the SEPA record and the comment period be extended to allow meaningful public review of its contents.

On the Dolarway Road Rejection The Soils Tell the Same Story:

Your letter and public statements cite the Dolarway Road site's floodplain location as a primary reason it was rejected in favor of the Kittitas Highway parcel. This justification does not survive soil science scrutiny. The USDA Web Soil Survey maps the dominant unit on the Kittitas Highway parcel Mitta ashy silt loam, 86.6% of the site on *"inset fans, fan skirts, fan aprons, and flood plains,"* with a drainage class of *somewhat poorly drained* and a seasonal water table at 34–49 inches. The secondary unit, Deedale clay loam (13.4%), is mapped explicitly on a **flood plain landform** with a water table at just 12–19 inches and a saturated hydraulic conductivity of 0.00–

0.06 in/hr effectively impermeable. These are not materially different hydrological conditions from those that disqualified Dolarway Road. The Kittitas Highway site was not rejected by FEMA's flood mapping but its soils behave as floodplain soils. Proposing to site a drainfield, a 180,000-gallon fire suppression tank farm, and 5+ acres of industrial gravel over these soil units, while citing floodplain avoidance as the basis for site selection, is a distinction the soil science does not support.

On the Water Monitoring Wells Data That Should Be in the SEPA Record:

The PUD confirmed that water testing was performed by the Kittitas County Public Health Department prior to purchase, and that two water monitoring wells were subsequently installed by geotechnical engineers. This is significant. The SEPA checklist (§B.3) contains no monitoring well data, no seasonal high water table measurements, and no soil permeability analysis adequate to support a drainfield siting determination. The checklist mentions that monitoring wells exist but provides none of their findings. Under WAC 197-11-335 and the hard-look standard of *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wn.2d 267 (1976), a DNS cannot rest on the existence of studies whose data is withheld from the public record. The monitoring well results particularly seasonal high water table elevations are directly material to the drainfield placement directly adjacent to the chronically wet zone on the neighboring parcel.

On "There Are No Shortcuts Everything Is Subject to DOH Approval":

With respect, the response demonstrates exactly the legal problem at the center of this comment. The Washington Supreme Court held in *King County v. Friends of Sammamish Valley*, 3 Wn.3d 861 (2024), that a lead agency cannot satisfy SEPA by pointing to other regulatory programs as a substitute for actual environmental analysis. Saying "DOH will review it" is not a SEPA analysis of groundwater, drainfield viability, or hydrogeological impact. It is precisely the kind of regulatory hand-off the Court rejected. Furthermore, the PUD's own checklist (Question A.10) was required to identify all governmental approvals needed for the proposal. If DOH approval is required as the PUD now confirms those approvals and their conditions are part of the environmental baseline the County must evaluate before issuing any threshold determination, not after.

On Prime Farmland and 1,868 Truck Trips:

Your checklist incorrectly calls this a “former hay field.” This parcel is and has been for quite some time an actively farmed on USDA-designated Prime Farmland if Irrigated. Approximately 5.79 acres or 60% of the parcel is proposed to become permanent industrial gravel yard, requiring an estimated 1,868 heavy truck trips to export topsoil and import aggregate over a single construction season. That soil took millennia to form. Once paved, it cannot be restored. The Washington Supreme Court reversed a DNS for an industrial use on A-20 land in **this same county** in *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737 (2014). A DNS issued on this record carries the same legal exposure for both the County and the PUD.

On the 3-Acre to 10-Acre Jump The Record Implies Expansion:

The PUD’s current facility occupies 3 acres inside the Ellensburg city limits. The proposed headquarters sits on 9.65 acres more than three times the current footprint placed on Prime Farmland in an agricultural corridor. The checklist (Question A.7) states: *"No plans for future additions at this time."* That answer strains credibility when the proposed facility is triple the size of the one it replaces. The current 3-acre site, based on direct observation, is not operating at capacity. If the existing facility is genuinely insufficient, the SEPA record should demonstrate why and document what prevents more efficient use of the land already held. Under WAC 197-11-060, SEPA requires evaluation of *cumulative and long-term* operational impacts. A facility footprint three times larger than what currently exists, sited on Prime Farmland with no greenspace, no agricultural buffer, and no stated expansion ceiling, is not a like-for-like replacement. It is a platform for growth. The community and the County are entitled to know what that growth looks like before any threshold determination is made.

On the Affordable Hay Market An Impact the Record Ignores:

The premium export hay the Kittitas Valley is known for is not what this field produces. This parcel grows lower-grade mixed hay what fixed-income retirees with one horse, 4-H families raising a single steer, and small-acreage livestock owners across the county rely on. Those households cannot afford premium dairy-quality hay. When fields like this one are converted, they don’t find alternatives they reduce their herds or leave the rural lifestyle they came here for. The checklist contains zero analysis of who buys this hay, who loses when it disappears, or what

cumulative pressure another conversion adds to an already-shrinking affordable feed supply. WAC 197-11-060(4) requires evaluation of indirect and cumulative socioeconomic impacts. The record is silent.

On Easements and Right to Farm:

Your letter asserts this project "does not block, limit, or reduce any existing easements." The site plan narrows the existing 30-foot agricultural easement to a 25-foot paved strip and pinches the northeast corner with a rigid fence. That easement serves active alfalfa farming including irrigation ditch access that RCW 7.48.310(1) explicitly protects as part of a lawful agricultural activity. Under *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178 (2017), actions that make an easement materially more difficult to use are prohibited unless justified by the needs of the servient estate. Under Washington's Right to Farm Act, RCW 7.48.305, and *Buchanan v. Simplot Feeders Ltd.*, 134 Wn.2d 673 (1998), the established agricultural operation predating this application by years is presumptively protected. A single sentence in a public letter is not an easement analysis, and it will not survive legal scrutiny.

On "Rural Working" Character Zero Greenspace:

Your letter promises minimal visual impact and rural character. The site plan allocates **zero acres** of the 9.65-acre parcel to designed greenspace, landscape buffers, or native vegetation proposing 60% industrial gravel and 53.5% total impervious surface, with no street-frontage landscaping along Kittitas Highway and no visual screening between your operation and adjacent active farmland. A typical rural 10-acre parcel in Kittitas County leaves 80–90% of the ground in pasture, hay, garden, trees, or native cover the configuration the County's own comprehensive plan designates as "Rural Working." KCC 17.60A's compatibility requirements for "landscape buffers, special setbacks, and screening" are not satisfied by a perimeter fence.

On Lighting Your Letter and Your Checklist Contradict Each Other:

Your letter promises dark-sky-aligned, motion-censored lighting used only when crews need yard access during outages. Your own SEPA checklist (Section 11a) states there will be security lighting "on the buildings and **in the storage yard when it's dark outside.**" That is not emergency-only access lighting. That is permanent nightly illumination of a 5.79-acre industrial

yard adjacent to active farmland, and residences. These are contradictory statements in the public record. A DNS cannot be issued on contradictory representations.

A Candid Observation on Risk:

This community is not opposed to the PUD having a functional, well-designed headquarters just not on USDA Prime Farmland. What this comment establishes is that a DNS issued on this record with a siting study withheld from public review, monitoring well data absent from the checklist, a project description that was unresolved at the time of application, no agricultural impact analysis, and a footprint three times the size of the facility being replaced would face substantial legal challenge under precedents this County has already lost.

A Constructive Path Forward:

The Kittitas Highway parcel need not be paved to serve the community. A conservation easement preserving agricultural use paired with a mentorship arrangement through Washington FFA connecting a local farmer with the next generation of Kittitas Valley producers would keep Prime Farmland in production, serve the affordable hay market, provide genuine agricultural education, and position the PUD as a genuine steward of the rural landscape it describes valuing. Alternatively, continuation of the current hay lease at fair market terms costs the PUD nothing and preserves something the community cannot recover once it's gone. Of course, there are no barriers to selling the parcel to a developer who could build a single-family dwelling and continue to farm the parcel. These options exist; they deserve honest consideration before the County issues any threshold determination.

Otherwise, on the current path, I formally request a Determination of Significance and full Environmental Impact Statement for SE-26-00003.

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

Public Facebook comment submitted prior to April 18, 2026, 5:00 PM deadline

ADDENDUM TO PUBLIC COMMENT SE-26-00003

Kittitas PUD #1 Headquarters Proposed Site Kittitas Highway, Ellensburg WA

Complete Hazardous Materials Inventory, Fire Suppression Water,

Groundwater Contamination Pathways, and Inadequacy of DNS

George Thomas Adjacent Landowner, Active Farmer | SE-26-00003 | April 18, 2026

I. Legal Standard

SEPA requires that a threshold determination be based on a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of a proposal. *Norway Hill Pres. & Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 278, 552 P.2d 674 (1976). Where an applicant's checklist omits material information about a category of probable significant impact, the lead agency cannot satisfy its obligation to take a "hard look" at environmental consequences by accepting those omissions at face value. *Id.* The Washington Supreme Court reversed a DNS for an industrial use on Agriculture-20 zoned land in this County without meaningful environmental review of the use's actual character. *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737 (2014). And a lead agency cannot discharge SEPA obligations by pointing to downstream regulatory review by other agencies as a substitute for actual environmental analysis. *King County v. Friends of Sammamish Valley*, 3 Wn.3d 861 (2024). Both hold directly here.

The SEPA checklist at §B.7.a(3) states: *"No anticipated hazardous chemicals will be stored, used, or produced."* The inventory below demonstrates that this answer is not a close call. It is a material misrepresentation of the operational character of an electric distribution utility service yard one the County had an independent obligation to recognize before accepting the checklist as complete.

II. Complete Hazardous Materials Inventory Kittitas PUD Service Yard

The table below inventories the full range of materials predictably stored, handled, maintained, or disposed of at an electric utility operations and materials yard of the scale proposed. All categories are standard operational inventory for an electric distribution utility. None require speculation. Every category in red was omitted from the SEPA checklist entirely.

Material / Substance	Category	Regulatory Framework	Environmental Risk Pathway	Disclosed in Checklist
A. TRANSFORMERS & ELECTRICAL EQUIPMENT				
Distribution transformers (pole-mount & pad-mount)	Electrical equipment	Mineral oil: Class IIIB combustible; PCBs in pre-1979 units per TSCA 40 CFR Part 761	Oil spill/fire → soil & groundwater; PCB release triggers Superfund-level cleanup	Not Disclosed
Voltage regulators & capacitors	Electrical equipment	May contain PCB-laden oil; TSCA regulated; RCRA hazardous if PCB >50 ppm	PCB spill → persistent soil contamination; migrates via stormwater to irrigation ditch	Not Disclosed
Switchgear containing SF_6 (sulfur hexafluoride)	Electrical equipment	GWP = 23,900× CO_2; WAC 173-441 GHG reporting; EPA 40 CFR Part 98 Subpart DD	Release during servicing → significant GHG; no disclosure or mitigation plan	Not Disclosed
Used / spent transformer oil (waste oil)	Hazardous waste	EPA used oil regulations 40 CFR Part 279; RCW 70A.305 (MTCA)	Improper storage or spill → soil contamination; groundwater migration	Not Disclosed
B. BATTERIES & ENERGY STORAGE				
Lead-acid batteries (vehicles, UPS, substation backup)	Hazardous material / waste	RCRA: corrosive characteristic waste (D002); contains sulfuric acid & lead; 40 CFR 266 Subpart G	Acid spill → soil pH disruption; lead leaching to shallow water table (12–19 in. on site)	Not Disclosed
Lithium-ion batteries (newer vehicles, equipment)	Hazardous material	DOT Class 9 hazmat for transport; fire risk: thermal runaway; NFPA 855	Thermal runaway fire releases toxic gases (HF, CO); difficult to extinguish	Not Disclosed

Material / Substance	Category	Regulatory Framework	Environmental Risk Pathway	Disclosed in Checklist
Nickel-cadmium (NiCd) batteries	Hazardous waste	Cadmium: RCRA listed hazardous (D006); RCW 70A.305 MTCA	Cadmium is a persistent heavy metal; leaches to groundwater over shallow clay soils	Not Disclosed
Battery electrolyte (sulfuric acid) in bulk	Corrosive chemical	OSHA 29 CFR 1910.119 PSM threshold; RCW 70A.300 (hazardous substance release)	Concentrated acid spill over shallow Deedale clay unit → rapid lateral migration	Not Disclosed
C. WIRE, CABLE & INSULATION MATERIALS				
Copper and aluminum conductor wire (bulk spools)	Raw material / recyclable	Scrap metal; no direct hazard but attracts theft increasing site security activity	Low direct environmental risk; theft response → increased nighttime activity/lighting	Not Disclosed
PVC-jacketed cable and conduit	Polymer / potential hazardous waste	PVC contains plasticizers (phthalates) and lead/tin stabilizers; dioxin precursor if burned	Fire or improper disposal → dioxin and HCl release; phthalate leaching to soil/water	Not Disclosed
XLPE and EPR insulated cable	Polymer material	Cross-linked polyethylene; not easily recyclable; not acutely toxic under normal conditions	Low risk under normal storage; fire releases carbon monoxide and hydrocarbon gases	Not Disclosed
Lead-sheathed cable (legacy inventory)	Heavy metal-containing	Lead: RCRA D008; RCW 70A.305 MTCA priority chemical	Lead sheathing degradation in outdoor storage → dust or leachate to soil	Not Disclosed
Cable pulling lubricant / wire-pulling compound	Petroleum-based chemical	Petroleum product; potential stormwater contaminant	Routine application → accumulation in gravel yard → stormwater mobilization	Not Disclosed
D. UTILITY POLES & TREATED WOOD PRODUCTS				
Pentachlorophenol (penta)-treated poles	Treated wood / hazardous substance	Penta: EPA Restricted Use Pesticide; RCW 70A.305 MTCA listed; probable carcinogen (Group B2)	Yard storage leachate in rain → soil permeation; run-on to hay crop → livestock exposure risk	Not Disclosed
Creosote-treated poles	Treated wood / hazardous substance	Creosote: EPA restricted pesticide; IARC	Heat/rain volatilization and leaching; long-term soil	Not Disclosed

Material / Substance	Category	Regulatory Framework	Environmental Risk Pathway	Disclosed in Checklist
		Group 1 carcinogen; dioxin-related compounds	contamination under storage area	
CCA-treated poles (chromated copper arsenate)	Treated wood / hazardous substance	Arsenic: RCRA D004; chromium: RCRA D007; both MTCA priority chemicals	CCA leachate over shallow water table → arsenic and chromium in groundwater; crop uptake risk	Not Disclosed
E. PETROLEUM FUELS, LUBRICANTS & HYDRAULIC FLUIDS				
Diesel fuel (vehicles, emergency generator AST)	Class II flammable liquid	EPA SPCC required if storage >1,320 gal aggregate (40 CFR Part 112); MTCA regulated	Tank leak or spill → MTCA cleanup liability; generator AST over shallow water table	Not Disclosed
Hydraulic fluid (boom trucks, digger-derricks)	Petroleum product	Petroleum hydrocarbon; chronic low-level release from equipment maintenance	Equipment parking/maintenance drip → gravel surface accumulation → stormwater mobilization	Not Disclosed
Engine oil, transmission fluid, DEF	Used oil / petroleum product	Used oil: 40 CFR Part 279; not hazardous if managed properly; DEF: urea solution	Chronic drips in gravel yard surface; cumulative petroleum loading in stormwater	Not Disclosed
Aerosol lubricants, corrosion inhibitors, penetrating oils	Miscellaneous petroleum products	VOCs; potential air quality impact at scale	Routine use; accumulation in gravel yard soils; VOC emissions during application	Not Disclosed
F. HERBICIDES, SOLVENTS & OPERATIONAL CHEMICALS				
Herbicides for ROW management (glyphosate, triclopyr, imazapyr)	EPA-registered pesticides	WAC 16-228; mixing/storage triggers Pesticide Management Plan requirements	Mixing station → spill or rinse water → stormwater runoff → adjacent irrigation ditch and hay crop	Not Disclosed
Solvents and degreasers (parts washers, equipment cleaning)	VOC / potential RCRA hazardous waste	Halogenated solvents: RCRA listed (F001–F005); non-halogenated: RCRA characteristic if ignitable	Parts washer discharge → soil infiltration; vapors in enclosed warehouse; fire risk	Not Disclosed

Material / Substance	Category	Regulatory Framework	Environmental Risk Pathway	Disclosed in Checklist
Compressed gases (acetylene, oxygen, CO_2)	DOT Hazmat Class 2	DOT 49 CFR Part 173; OSHA 29 CFR 1910.101; NFPA 55 (compressed gas storage)	Pressurized cylinder failure → explosion/fire risk in materials yard adjacent to hay storage	Not Disclosed
Marking paint / spray paint (utility locate)	Aerosol / VOC	VOC content regulated under WAC 173-492 (Architectural Coatings)	Minor; included for completeness of inventory	Not Disclosed
G. METERS, ELECTRONICS & LEGACY EQUIPMENT				
Older utility meters (mercury tilt switches)	Mercury-containing equipment	Mercury: RCRA D009; RCW 70A.305 MTCA; Washington Mercury-Containing Products Act RCW 70A.222	Mercury release in storage yard → highly persistent soil and water contaminant	Not Disclosed
Electronic circuit boards / smart meters	E-waste / hazardous waste	Lead solder, cadmium, beryllium, brominated flame retardants; RCW 70A.305	Outdoor storage degradation → heavy metal leaching to soil and shallow water table	Not Disclosed
Fluorescent and HID lighting fixtures (waste)	Mercury-containing waste	RCRA D009 (mercury); Washington Fluorescent Lamp Recycling Law RCW 70A.226	Broken lamps in storage → mercury vapor; broken glass with mercury coating → soil contamination	Not Disclosed
H. FIRE SUPPRESSION INFRASTRUCTURE				
Fire suppression water (120,000–180,000 gal tank capacity)	Fire protection / secondary containment trigger	NFPA 22; IFC § 3404; no disclosed fill source from 275 gpd well (655-day fill time)	Post-fire contaminated water → overland flow over Deedale clay (Ksat 0.00–0.06 in/hr) → irrigation ditch	Partial Only
Chemical fire suppressants / foam agents (if applicable)	AFFF / Class B foam: PFAS chemicals	PFAS (AFFF): EPA drinking water MCL 4 ppt; designated hazardous substance under CERCLA	PFAS is persistent, mobile, and bioaccumulative; single-use event contaminates soil for decades	Not Disclosed

Every category shown in red was absent from the SEPA checklist. The yellow row (fire suppression water) was partially disclosed but without a fill-source identification, a contaminated firewater runoff plan, or a PFAS foam analysis. The claim that "no hazardous chemicals will be stored, used, or produced" at this facility is demonstrably false on the face of the application's own described use.

III. The Fire Suppression Water Paradox

A. *Tank volume reveals the true fire hazard*

The checklist (Question A.11) discloses two (or potentially three) 60,000-gallon fire suppression tanks 120,000 to 180,000 gallons of dedicated fire water. Under NFPA 22, *"tank capacity shall reflect actual fire demand."* A 6,300 sf administrative office building requires roughly 1,500 gpm for 2 hours approximately 180,000 gallons under IFC § B105.1. That volume is consistent with protecting a materials yard storing transformer oil, diesel, treated poles, and battery banks, not a low-impact administrative office. The applicant's own engineers have acknowledged the industrial fire hazard magnitude the checklist explicitly denies.

B. *The 275 gpd well cannot supply the fire system*

At 275 gallons per day, filling three 60,000-gallon tanks would require **655 days** nearly two years. The water source for initial fill and post-event replenishment is not disclosed anywhere in the SEPA record. WAC 197-11-060(4) requires evaluation of actual water demands. The fire suppression water must come from somewhere. Where it comes from, how it is replenished, and how it is contained after use are all undisclosed.

C. *PFAS foam contamination is an undisclosed catastrophic risk*

If the facility uses AFFF (aqueous film-forming foam) as a Class B fire suppressant standard for transformer oil, diesel, and electrical fires a single firefighting event would deposit PFAS (per- and polyfluoroalkyl substances) across the site and into adjacent soils. PFAS is now designated a hazardous substance under CERCLA. EPA's drinking water maximum contaminant level is 4 parts per trillion. PFAS is persistent, mobile in groundwater, and bioaccumulative. A single AFFF deployment over the Deedale clay unit with its 12–19 inch water table and lateral drainage toward the adjacent irrigation ditch represents a potential generation-long contamination event for downstream agricultural users. The checklist contains no mention of foam agent type, PFAS risk, or containment.

D. ***Contaminated firewater over a 12-19 inch water table***

Contaminated firewater from a transformer oil fire, diesel spill, or treated-wood yard fire becomes a recognized environmental release under both RCRA and Washington's Model Toxics Control Act, RCW 70A.305. The Deedale clay loam unit's near-zero saturated hydraulic conductivity (0.00–0.06 in/hr) means contaminated water will not infiltrate it will flow overland across the site toward adjacent agricultural land and the irrigation ditch to the north. No secondary containment basin, no firewater retention system, and no emergency response plan appear in the SEPA record.

IV. Treated Utility Poles A Chronic Leachate Source Over Prime Farmland

Utility pole yards are a well-documented source of chronic soil contamination. Pentachlorophenol, creosote, and CCA (chromated copper arsenate) are three of the most persistent regulated pesticides and heavy metal compounds in use. A typical electric utility maintains an inventory of dozens to hundreds of poles at its materials yard for routine and emergency replacement. The proposed 5.79-acre yard is sized for exactly this purpose.

Pole storage on gravel over the Mitta-Deedale soil complex presents specific risks: penta and creosote volatilize in summer heat and leach with rainfall; CCA leachate containing arsenic (RCRA D004) and chromium (RCRA D007) migrates laterally through the Deedale clay unit toward the adjacent irrigation ditch. The USDA-designated Prime Farmland immediately to the north the active alfalfa operation would receive any irrigation water drawn from that ditch. Arsenic and chromium bioaccumulate in hay crops and pose livestock and human health risks at low concentrations.

None of this is speculative. It describes the predictable consequence of storing utility poles on a shallow-water-table, laterally-draining soil profile adjacent to active irrigated agriculture. The checklist contains no pole storage inventory, no leachate analysis, and no evaluation of contamination risk to adjacent agricultural water. That is a SEPA failure, not a minor omission.

V. Battery Storage Three Distinct Hazard Profiles

Modern electric utility operations involve at least three distinct battery chemistries, each carrying a different regulatory profile and environmental risk:

Lead-acid batteries (UPS systems, substation backup, fleet vehicles) contain sulfuric acid and lead. When spent, they are RCRA hazardous waste (corrosive characteristic D002; lead toxicity D008). Lead is a persistent heavy metal that sorbs to soil particles and leaches slowly to groundwater over

decades. The Deedale unit's 12–19 inch water table depth provides minimal vertical separation for lead migration under the shallow water table conditions documented by the USDA.

Lithium-ion batteries (newer fleet vehicles, smart grid equipment) pose a thermal runaway fire risk that produces hydrogen fluoride (HF) gas, a highly toxic respiratory hazard, at concentrations that are dangerous even in open outdoor settings. Thermal runaway fires are not controllable with conventional water suppression and may require Class D or specialized suppression agents. The 10,200 sf enclosed materials warehouse, if used for battery storage, requires a fire suppression design specifically engineered for lithium-ion events not described in the checklist.

Nickel-cadmium batteries contain cadmium (RCRA D006), a known human carcinogen that is persistent in soil and accumulates in grain crops and leafy vegetables. Cadmium from battery storage or improper disposal migrates through the soil profile and has been detected in groundwater at utility and industrial storage sites at concentrations far exceeding drinking water standards.

VI. Wire, Cable, and PVC Insulation The Fire Scenario That Changes Everything

Bulk wire and cable inventory is a standard component of an electric utility materials yard. Spools of PVC-jacketed distribution cable, XLPE-insulated transmission cable, and legacy lead-sheathed cable may be stored in quantities of thousands of linear feet in the proposed 10,200 sf warehouse and adjacent yard.

Under normal storage conditions, PVC cable presents moderate environmental risk from plasticizer leaching (phthalates) and stabilizer compounds (lead- or tin-based in older formulations). However, the fire scenario is categorically different. Burning PVC releases hydrogen chloride (HCl), dioxins, and furans persistent organic pollutants regulated under both the Stockholm Convention and Washington's air quality rules. A warehouse fire involving bulk PVC cable inventory would create a toxic air release affecting adjacent residences, the active short-term rental, and the adjacent hay field. Hay contaminated with dioxin deposition cannot be fed to livestock and must be destroyed.

The fire suppression volume (120,000–180,000 gallons) is consistent with extinguishing a large warehouse fire involving bulk polymer materials. The checklist's claim of "no anticipated hazardous chemicals" does not account for the hazardous combustion products of materials that are not themselves hazardous under normal storage conditions but become acutely toxic under fire scenarios. SEPA's hard-look requirement encompasses reasonably foreseeable accident scenarios, not just routine operations. *Norway Hill*, 87 Wn.2d at 278.

VII. Cumulative and Indirect Impacts The Analysis That Never Happened

Each category of hazardous material above represents an independent SEPA disclosure obligation. Taken together, they represent something more: a cumulative environmental impact profile that is fundamentally inconsistent with a Determination of Non-Significance on Prime Farmland adjacent to an active agricultural operation, an irrigation ditch, a residence, and a short-term rental.

WAC 197-11-060(4) requires SEPA analysis to include "direct, indirect, and cumulative impacts caused by the proposal." WAC 197-11-444 expressly identifies earth, water, plants, animals, and human health as elements of the environment subject to review. The cumulative loading of transformer oil, diesel, hydraulic fluids, treated wood leachate, herbicide residues, battery acid, and potential PFAS foam on a 5.79-acre gravel yard over a 12–19 inch water table draining laterally toward an active irrigation ditch is precisely the scenario SEPA was designed to require agencies to evaluate before, not after, approval.

This County has been told, twice, by the Washington Supreme Court that it cannot approve industrial uses on A-20 agricultural land without meaningful environmental review (*Ellensburg Cement Products*, 2014), and cannot protect its agricultural land and water resources by relying on other regulatory programs to fill the gaps SEPA requires it to close itself (*Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 2011; *Friends of Sammamish Valley*, 2024). The checklist before the County is the third iteration of the same failure.

VIII. Conclusion and Requested Relief

The SEPA checklist's "no hazardous chemicals" answer is not a defensible position for an electric distribution utility operations yard proposing to store transformers, batteries, treated poles, bulk cable, petroleum fuels, herbicides, solvents, and compressed gases on a shallow-water-table site adjacent to active irrigated Prime Farmland. The omission is material, comprehensive, and under *Norway Hill's* hard-look standard independently sufficient to require withdrawal of any DNS determination.

I formally request that the lead agency:

1. Require a complete hazardous materials inventory covering all categories identified above, with storage volumes, containment specifications, SPCC plan, and SWPPP;

2. Require disclosure of fire suppression water fill source, PFAS/AFFF foam usage, and contaminated firewater containment design;

3. Require a PCB equipment disclosure and TSCA compliance analysis for all transformer and capacitor inventory;

4. Require a treated wood pole storage and leachate analysis with hydrogeological assessment of migration to adjacent agricultural water infrastructure;

5. Require a battery storage plan by chemistry with fire suppression design specific to lithium-ion thermal runaway scenarios; and

6. Issue a Determination of Significance and require a full Environmental Impact Statement for SE-26-00003.

Authorities Cited

Norway Hill Pres. & Prot. Ass'n v. King County Council, 87 Wn.2d 267, 552 P.2d 674 (1976)

Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014)

King County v. Friends of Sammamish Valley, 3 Wn.3d 861 (2024)

Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144 (2011)

Buchanan v. Simplot Feeders Ltd., 134 Wn.2d 673 (1998)

RCW 43.21C.030; WAC 197-11-060; WAC 197-11-080; WAC 197-11-330; WAC 197-11-360; WAC 197-11-444

RCW 70A.305 (MTCA); RCW 70A.300; RCW 7.48.305 (Right to Farm); RCW 70A.222 (Mercury Products); RCW 70A.226 (Fluorescent Lamps)

TSCA 15 U.S.C. §2605; 40 CFR Part 761 (PCBs); 40 CFR Part 112 (SPCC); 40 CFR Part 279 (Used Oil); 40 CFR Part 266 Subpart G (Batteries)

NFPA 22 (Water Tanks for Private Fire Protection); NFPA 855 (Energy Storage Systems); IFC § B105.1 (Fire Flow); NFPA 30 (Flammable & Combustible Liquids)

WAC 173-200 (Groundwater Quality Standards); WAC 173-441 (GHG Reporting); WAC 173-492 (Architectural Coatings); WAC 246-272A (On-Site Sewage)

EPA: CERCLA PFAS Hazardous Substance Designation (2024); EPA MCL for PFAS (4 ppt, effective 2024)

— George Thomas, adjacent landowner, active farmer, and appellant SE-26-00003
Addendum submitted prior to April 18, 2026, 5:00 PM public comment deadline

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.

06/20/2024 12:01:26 PM 202406200021
Page:1 of 5
$307.50
Easement PAUL KULCHENKO
Kittitas County Auditor

REVIEWED

JUN 20 2024

KITTITAS COUNTY TREASURER
INITIALS: KW

After recording return to:

Paul Kulchenko
13025 96TH PL NE
KIRKLAND, WA 98034

AUDITOR/RECORDER'S INDEXING FORM

DOCUMENT TITLE:	EASEMENT AGREEMENT
GRANTOR:	ZEROBRANE HOLDINGS KITTITAS LLC
GRANTEE:	PAUL and ALENA KULCHENKO
LEGAL DESCRIPTION OF THE GRANTOR PROPERTY (abbrev):	PTN OF SWQ OF STR: 4-17N-19E, W.M, KITTITAS CO., WA
LEGAL DESCRIPTION OF THE GRANTEE PROPERTY (abbrev):	SEC. 4; TWP. 17; RGE. 19; NE1/4 SW1/4 TAX 26 & TAX 27
ASSESSOR'S TAX PARCEL NO.:	291833, 051833

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is made this 15th day of June, 2024, by and between PAUL and ALENA KULCHENKO, a married couple ("Kulchenko" and/or "GRANTEE"); and ZEROBRANE HOLDINGS KITTITAS LLC, a Washington limited liability company ("ZeroBrane" and/or "GRANTOR") (Kulchenko and Zerobrane hereinafter referred to collectively as "Parties").

A. WHEREAS, Kulchenko owns title to the real property located in Kittitas County, Washington, legally described as follows ("Kulchenko property"):

The West Half of the Northeast Quarter of the Southwest Quarter of Section 4, Township 17 North, Range 19 East, W.M., in the County of Kittitas, State of Washington;

Except right of ways for Country Roads and Chicago, Milwaukee, St. Paul and Pacific Railway;

And except that portion of Section 4, Township 17 North, Range 10 East, W.M., Kittitas County, Washington which is bounded by a line described as follows:

Beginning at the South Quarter corner of said Section 4,
thence North 1°50' West along the centerline of the county road, 2601.68 feet;
thence South 87°06' West, 30.00 feet to the true point of beginning;
thence North 1°50' west, 24.20 feet;
thence South 87°38'50" West, 1598.80 feet;
thence South 16°21'30" West, 21.30 feet;
thence North 87°30'30" East, 596.19;
thence South 6°30' West, 14.32 feet;
thence North 87°06' East, 912.90 feet to the true point of beginning as granted to ben Ferguson in Quiet Title decree entered June 19, 1971 and consent Judgment entered June 28, 1971 in Kittitas County Superior Court Cause No. 17850.

Tax Parcel No. 291833

B. WHEREAS, Zerobrane owns title to the real property located in Kittitas County, Washington, legally described as follows ("Zerobrane property"):

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 17 NORTH, RANGE 19 EAST, W.M., KITTITAS COUNTY WASHINGTON, WHICH IS BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 4,
THENCE NORTH 1°50' WEST ALONG THE CENTER LINE OF THE COUNTY ROAD (FERGUSON ROAD) 30.00 FEET;
THENCE SOUTH 86°34' WEST, ALONG THE NORTH BOUNDARY OF STATE HIGHWAY 7-B, 650.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 86°34' WEST, 327.75 FEET;
THENCE NORTH 6°04'50" EAST, 1298.56 FEET;
THENCE NORTH 86°44'10" EAST, 237.55 FEET;
THENCE NORTH 86°53' EAST, 91.00 FEET;
THENCE SOUTH 6°07' WEST 1297.20 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT: AN EASEMENT FOR AN IRRIGATION DITCH 6 FEET IN WIDTH BEGINNING AT A POINT APPROXIMATELY 35 FEET WEST OF THE NORTHEAST CORNER OF THE HERETOFORE DESCRIBED PROPERTY AND THENCE FOLLOWING PARALLEL AND ADJACENT TO THE NORTH BOUNDARY LINE THEREOF A DISTANCE OF APPROXIMATELY 243.55 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION WITH THE NORTHWEST BOUNDARY OF SAID PROPERTY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS FOR THE PURPOSE OF IRRIGATION CONTROL, MAINTENANCE, UPKEEP AND REPAIR.

SITUATE IN THE COUNTY OF KITTITAS, STATE OF WASHINGTON

Tax Parcel No. 051833

C. WHEREAS, the Parties desire to create an access easement as set forth herein and establish the property benefitted by the easement, burdened by

the easement, and establish terms and conditions for the use and maintenance of the easement.

NOW, THEREFORE, for and in consideration of the benefits contained and derived hereunder, and for no monetary consideration, the Parties, for and on behalf of themselves and their respective successors in interest and assigns, do hereby grant, declare, convey and establish the following easement.

1. Easement.

1.1. Access Easement. A non-exclusive easement is hereby established and legally described as follows (hereinafter referred to as the "Access Easement"): A 30 foot wide easement for ingress, egress and utilities beginning at the Kittitas Highway and the Southeast corner of the Zerobrane property, then North along the East boundary of the said property to the Northeast corner, then West along the North boundary to a location halfway between the Northeast and Northwest corners of the Zerobrane property. The easement shall burden the Zerobrane property and benefit the Kulchenko property.

1.2. Use. The Access Easement shall be used by owner(s) of the benefitted property for the following purposes:

1.2.1. Private road for ingress and egress, together with, but not limited to, the right to repair, maintain and use said road; and

1.2.2. Underground utilities, including, but limited to, power, telephone, cable and natural gas, together with, but not limited to, the right to install, replace, repair, maintain and use said utilities.

Restrictions to Use. The area of the Access Easement shall not be used by either Party for long term parking, storage, staging of construction (except for installation, repair and maintenance required for the Access Easement) or any other use that would unreasonably interfere with its intended purpose. The owner of the benefitted property agrees that the access road will be used in a reasonable manner, and that vehicles will travel at a reasonable speed to avoid unnecessary damage to the road surface or danger to abutting property owners and their employees, guests, and invitees. Use of the Access Easement area by Grantee or persons claiming under Grantee shall be subject to such reasonable rules and regulations as Grantor shall adopt from time to time, provided Grantor shall give Grantee notice of such rules and regulations.

2. Use and Maintenance. The ongoing costs of any maintenance, upkeep or repair associated with the Access Easement shall be split between the Parties proportional to their use of the easement; however, the costs to repair any

defective work for which one Party is directly responsible shall be borne by that responsible Party.

3. Easement Runs with the Land. The easements granted and the restrictions and covenants established herein shall run with the land described herein and shall bind and be obligatory upon the parties and their respective heirs, successors, assigns, licensees, invitees, and legal representatives.

4. Release and Indemnity. Grantee does hereby release, indemnify, and promise to defend and hold harmless Grantor from any and all liability, loss, damage, expense, action, and claims, including costs and reasonable attorneys' fees incurred by Grantor in defense thereof, asserted or arising directly or indirectly on account of or out of acts or omissions of such Grantee and Grantee's invitees, servants, agents, employees, and contractors in the exercise of the rights granted herein, PROVIDED, HOWEVER, this section does not purport to indemnify such Grantor against liability for damages arising of bodily injury to persons or damage to property to the extent caused by the negligence of the Grantor or Grantor's agents or employees.

5. Successors and Assigns. Grantee shall have the right to assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in or under the easements conveyed, granted and reserved herein. Without limiting the generality of the foregoing, the rights and obligations of the declarants shall inure to the benefit of and be binding upon their respective successors and assigns.

6. Attorney's Fees. In the event of any legal action to enforce, interpret, or construe the provisions, restrictions, obligations, and covenants herein, the prevailing party or parties shall be entitled to an award of costs, disbursements, and reasonable attorney's fees against the non-prevailing party or parties.

IN WITNESS WHEREOF, the parties to this Agreement have set their hands the first date written above.

GRANTOR:

ZEROBRANE HOLDINGS KITTITAS LLC

A Washington limited liability company

By: Paul Kulchenko

Its: Managing member

GRANTEE:

Paul Kulchenko, an individual

Alena Kulchenko, an individual

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that PAUL KULCHENKO and ALENA KULCHENKO are the individuals who appeared before me, and said individuals acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 15th day of June, 2024.

Shitul

Printed Name: SHITUL NAGORI

Notary Public in and for the State of Washington

My Commission Expires: 07/30/2025.

SHITUL NAGORI
Notary Public
State of Washington
Commission # 23035227
My Comm. Expires Jul 30, 2025

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Paul Kulchenko is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Member of ZEROBRANE HOLDINGS KITTITAS LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 15th day of June, 2024.

Shitul

Printed Name: SHITUL NAGORI

Notary Public in and for the State of Washington

My Commission Expires: 07/30/2025

SHITUL NAGORI
Notary Public
State of Washington
Commission # 23035227
My Comm. Expires Jul 30, 2025