

WHATCOM COUNTY

Planning & Development Services
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Mark Personius, AICP
Director

SEPA Appeal Form

NOTE: Fees will be assessed in accordance with the Whatcom County Unified Fee Schedule (UFS) in effect at the time of application submittal. Please contact Planning and Development Services to determine project specific fees. Click [here](#) to see the 2019/2020 UFS.

Per UFS 2843 all permits and applications are subject to a Technology fee. The fee is calculated on the permit/application fees due.

Appeal of: ☐ Determination of Significance
☐ Determination of Non-Significance
☒ Mitigated Determination of Non-Significance

Appellant:

Name SEE ATTACHED LIST Phone _____
Address _____ City _____
State _____ Zip _____ Email _____
Property Interest of Appellant _____

Property Owner:

Name ALA Energy, LLC Phone (403) 519-8335
Address 4100 Unick Road City Ferndale
State WA Zip 98248 Email _____

Date Determination Became Final: September 3, 2025

Associated SEPA file: SEP 2024 - 00052

Assessor's Parcel Number(s): 390129428046 and 390129495093

A Statement is Attached to this Application Containing:

- Why I believe the determination or interpretation is not correct, **and**
- What I believe to be the correct determination or interpretation, **and**
- How the decision adversely affects me or my property

I/ We certify that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my/our knowledge and belief.

Keith Carl-Dove
Signature of Appellant

9.29.2025

Date

[Signature]
Signature of Attorney/ Agent

9.25.2025

Date

I certify that I know or have satisfactory evidence that Jan Husseلمان
is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

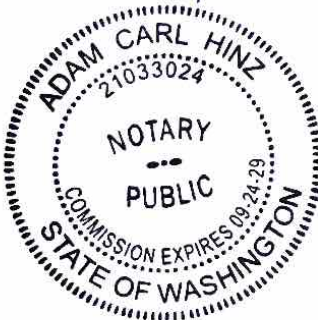
Dated 9/25/2025



Notary Signature: [Signature]
Printed Name: Adam Carl Hinz
Notary Public in and for the State of Washington
Residing at King County, Seattle
My appointment expires: 9 / 24 / 29

I certify that I know or have satisfactory evidence that Keith Carl-Dove
is/are the person(s) who appeared before me, and said person(s) acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated 9/29/2025



Notary Signature: [Signature]
Printed Name: Adam Carl Hinz
Notary Public in and for the State of Washington
Residing at King County, Seattle
My appointment expires: 9 / 24 / 29

For County Use Only:

Appeal Number: APL _____ - _____ Appeal Fee: \$ _____

Receipt Number: _____ Date Received: _____

SEPA Appeal List of Appellants

File No. SEPA2024-00052

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EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

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SEATTLE, WA 98104-1711

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September 29, 2025

Mark Personius
Whatcom County Current Planning Division
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VIA EMAIL: ePermits@co.whatcom.wa.us

Re: SEPA2024-00052: *Appeal of SEPA Mitigated Determination of Nonsignificance for ALA Energy Multiple Projects*

Dear Mr. Personius:

Pursuant to RCW 43.21C.075, WAC 197-11-680, and Whatcom County Code 16.08.170, this is an appeal of the SEPA Mitigated Determination of Nonsignificance (“MDNS”) No. SEPA2024-00052 issued to ALA Energy on September 3, 2025. The MDNS addresses the combined impacts of a conditional use permit and commercial building permits that cover three separate bodies of work at the ALA Energy liquified petroleum gas terminal in Ferndale: a) a new enclosed ground flare; b) a new waste gas recycling project; and c) after-the-fact permitting for approximately 31 construction projects at the terminal that were built without required permits, starting in 2016. This appeal will refer to these three components collectively as the “Project,” and the combined conditional use and building permits as the “Permits.”

Appellants are six environmental non-governmental organizations: Friends of the San Juans, Evergreen Islands, RE Sources, the Sierra Club, Washington Conservation Action, and Whatcom Environmental Council, who are represented by undersigned counsel. All appellants have provided comments to the County regarding this permitting process. Contact information for all appellants is provided at the bottom of this appeal.

Appellants do not oppose construction of the ground flare and waste gas recycling components of the Project. Appellants support actions that reduce air pollution and reduce waste of resources. The focus of this appeal is the increased transportation and handling of butane and propane at the terminal that the Permits facilitate, and the significant safety and environmental impacts that follow from it. Through this appeal, appellants seek a full analysis of the risks and impacts of increased transportation and handling of such fuels, and mitigation in the form of transportation and throughput limits.

I. BACKGROUND

The Ferndale terminal has been in place since around 1974, with a significant expansion in 1994. It was originally built to transport butane and propane that were received from nearby crude oil refineries, primarily via pipeline. Historically, throughput at the facility was modest.

Initially, the terminal shared a wharf and pier with an aluminum smelter owned by Intalco Aluminum Corp. (“Intalco”) on an adjacent parcel. A 2003 aquatic lands lease between Intalco and the Department of Natural Resources (“DNR”) states that 24 vessels used the pier annually for unloading raw materials for aluminum production, and another 24 vessels used it for butane and propane. The lease limits the use of the pier to 48 vessels total annually. In 2016, Intalco assigned its rights and duties under the lease to Petrogas Pacific LLC (“Petrogas”), which had acquired the terminal.

Also in 2016, Whatcom County passed an “emergency moratorium” prohibiting “the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuel or new projects that would export fossil fuels.” The ordinance effectively prohibited issuance of County permits for activities at the Ferndale terminal that would facilitate “increased shipment” of propane or butane.

During the years that followed, however, Petrogas implemented dozens of projects at the terminal site that “facilitated” the “increased shipment” of butane and propane from the terminal. Petrogas did not seek or obtain permits for this work. The volume of butane and propane handled by the terminal steadily increased during this time.

The company’s code violations triggered an enforcement action against the terminal by the Northwest Clean Air Agency (“NWCAA”), which resulted in a \$4 million fine. In a 2021 letter to the County, NWCAA explained how Petrogas implemented a number of unpermitted changes that “increased the facility’s capacity for propane deliveries and handling.” The letter documented how railcar visits to the terminal increased from around 1,000 cars/year to nearly 17,000 cars/year, and vessel traffic increased from 2–5 berthing events per year to 26 in 2019.

In 2021, the County amended its code to put new permanent limits on new and expanded fossil fuel terminals, replacing the emergency moratorium with permanent limits. WCC 20.68.154. The following year, AltaGas Ltd., a Canadian corporation, purchased 100% control of Petrogas.

In March of 2023, Whatcom County executed a “compliance agreement” with Petrogas. That agreement memorialized the County’s view that the unpermitted projects performed starting in 2016 “have substantially increased facility throughput” in violation of the emergency moratorium and other provisions of the County code. To rectify these alleged violations, the agreement confirmed that the company would seek a Conditional Use Permit (“CUP”) and Whatcom County would prepare an environmental impact statement (“EIS”) under the State Environmental Policy Act (“SEPA”) that “collectively evaluates probable significant adverse environmental impacts” including “increases in transshipment capacity” and “increases in Facility throughput.”

During the course of considering the CUP, however, the County reversed course. It abandoned its commitment to prepare an EIS and instead concluded that the Project’s impacts were “insignificant” when mitigated. Appellants have submitted extensive comments at every stage of

the process explaining why this conclusion was inconsistent with governing legal standards. An appeal is necessary to resolve this dispute.

II. WHY THE MDNS IS INCORRECT

The focus of this appeal is the significant increase in the volume of butane and propane handled by the terminal, and the changes in the configuration and operation of a terminal that facilitated it. As discussed above, the terminal's operator has made multiple unauthorized changes to the facility that allow it to increase volumes received and shipped from the facility and seeks approval for additional ones. The terminal's owners boast publicly of their intention to develop a growing international propane export business centered on the terminal. That expansion of the terminal's throughput has never been subject to any scrutiny under SEPA. The County has never authorized it, never studied it, and never received appropriate public input on it.

The unpermitted projects, along with the flare and waste gas recycler, increase the throughput of propane and butane at the terminal. In its application materials, ALA repeatedly insists that the projects did not increase the "maximum physical capacity" of the terminal and hence had no impact on the amount of butane and propane handled there. But the focus on "physical capacity" arises from the Whatcom County Code, not SEPA. SEPA requires a determination of the environmental and safety impacts of an "action." Here, the action is a number of construction projects that effectively allow the terminal to move more propane through the terminal that it was able to move before.

The effects of increased propane and butane arriving via rail, being offloaded for cooling and storage, and loading onto marine vessels are significant. For example, there are crucial safety impacts—other propane handling facilities have suffered catastrophic accidents with major loss of life. Vessel traffic carrying fossil fuels is a major threat to people and wildlife in the Salish Sea, from federally protected orca whales to tribal, commercial, and recreational fisheries. Indeed, the risks and impacts of increased fossil fuel vessel traffic in the region were highlighted by a recent state Court of Appeals decision associated with a nearby oil refinery, which confirmed: "Clearly, if the evidence showed a probable increase in vessel traffic attributable to the project, *an EIS would have been triggered*. An MDNS would not have been an option." *Phillips 66 Co. v. Whatcom Cnty.*, 21 Wash. App. 2d 1006 (2022). The risks and impacts of fossil fuel vessel traffic are also addressed in several provisions of state law. In short, government actions that result in increased marine traffic in the Salish Sea require a full EIS under SEPA.

The applicant has calculated its "maximum transshipment capacity" at a level of over 100,000 barrels a day. To Appellants' knowledge, the facility has never handled anything close to that volume. It was calculated using apparently faulty assumptions, for example, without regard for any legal or regulatory limits, such as clean air regulatory standards, or practical ones, such as limits on loading and unloading. Moreover, the calculation of the terminal's theoretical maximum capacity was made in an almost-entirely redacted technical document that is shielded from public view. There is no indication that Whatcom County Planning & Development Services ("PDS") conducted any independent analysis of this document. But the MDNS confirms the County's misunderstanding of SEPA, asserting that only an increase in capacity of

more than 10,000 barrels/day above the represented 101,245 barrels/day theoretical maximum would trigger additional permitting and SEPA review.

The MDNS got it wrong. Any “action”—such as a construction or conditional use permit—that has the effect of increasing the throughput of fossil fuels is subject to SEPA review, not just those actions that increase a hypothetical (and incorrect) maximum physical capacity by more than 10%. Appellants’ expert review of the company’s application materials reveals that several of the unpermitted projects do in fact increase the ability of the terminal to handle propane and/or butane. In other words, regardless of the hypothetical “maximum” physical capacity addressed in the redacted document, the Permits alleviate practical or regulatory bottlenecks and allowed throughput to increase. This is borne out by actual throughput volumes, which have steadily increased since the projects were completed. It is also borne out by the company’s own statements, which reveal an explicit plan to increase propane export volumes from the terminal. Finally, the focus on total capacity of all liquified petroleum gas products obscures the significant regulatory and safety differences between propane and butane.

The County’s error basing its analysis on a theoretical maximum physical capacity also infects the conclusions regarding greenhouse gas (“GHG”) emissions. The proponent’s GHG analysis, based on the redacted hypothetical maximum capacity analysis, counterintuitively concludes that the Project will reduce GHGs. But if the Project increases the ability of the terminal to handle fossil fuels, by removing physical or regulatory bottlenecks, the reverse will be true. The GHG analysis is as unreliable as the capacity analysis.

In sum, the MDNS is “clearly erroneous” because it misinterprets the County’s obligations under SEPA as a matter of law, and it relies on incomplete and incorrect information regarding the terminal’s throughput as a matter of fact. Its conclusion that there are no significant impacts from the projects is wrong.

III. WHAT THE CORRECT DETERMINATION IS

Appellants respectfully ask the Hearing Examiner to overturn the MDNS and direct PDS to issue a determination of significance and initiate a full EIS process that considers all of the direct, indirect, and cumulative impacts of increasing throughput at the terminal. In the alternative, the Hearing Examiner can direct PDS to consider conditions that mitigate the potential impacts of increased throughput. Specifically, enforceable fuel-specific limits on the handling of butane and propane, consistent with the terminal’s historic volumes prior to completion of any unpermitted projects, could mitigate the adverse impacts of the project.

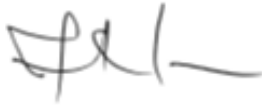
IV. HOW THE DECISION ADVERSELY AFFECTS APPELLANTS

Appellants are non-profit member organizations whose mission it is to protect, preserve, and restore the environmental qualities of the Salish Sea, reduce reliance on polluting and dangerous fossil fuels, and promote a clean energy transition. These interests are within the zone of interests protected by SEPA. Appellants’ members live, work, and recreate in the area around the terminal and adjacent the rail and shipping routes to and from the terminal. The Permits, which facilitate increased handling and transportation of dangerous fossil fuels, injure Appellants’ members interests by: a) increasing rail and vessel traffic and their attendant pollution, noise, and

disruption of recreational and other activities; b) exposing them to catastrophic safety and environmental risks at the terminal or along transportation routes; and, c) facilitating and promoting the continued use of fossil fuels around the world, undermining state, county and international goals to transition to cleaner energy. Appellants will provide evidence supporting these injuries during or prior to hearing as required.

We look forward to hearing from you further.

Sincerely,



Jan E. Hasselman
Senior Attorney
EARTHJUSTICE

On Behalf of Appellants:

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