



WHATCOM COUNTY

WASHINGTON

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Memorandum

TO: The Honorable Whatcom County Council
FROM: Mark Personius, AICP, PDS Director
DATE: September 15, 2025
SUBJECT: Petrogas Questions from CM Donovan

Council member Donovan submitted a request to PDS for responses to eighteen (18) questions on the Petrogas permitting compliance process. CM Donovan's questions and the PDS responses follow.

1. Why did PDS issue a press release (<https://www.whatcomcounty.us/CivicSend/ViewMessage/message/195837>), and issue a promise to the Council and public, that "The County has determined that, at a minimum, Petrogas must apply for and obtain a Conditional Use Permit?"

Answer: Pursuant to a 2023 compliance agreement between Petrogas (now ALA Energy) and Whatcom County, the parties agreed that ALA would apply for a conditional use permit (CUP) and other construction permits for previously unpermitted modifications to the Cherry Point ALA facility (also called the Ferndale Terminal) made between 2016 and the date of the compliance agreement. The agreement also required that ALA comply with the Washington State Environmental Policy Act (SEPA) to review and mitigate potentially significant environmental impacts of major facility modifications previously completed and for certain planned improvements. The goal of the compliance agreement is to get the ALA facility into compliance with Whatcom County codes and be able to approve new waste gas recycling and ground flare improvements that will permanently protect the environment by reducing future greenhouse gas (GHG) and volatile organic compound (VOC) emissions and provide appropriate mitigation for increased vessel trips on the Salish Sea.

2. Did Petrogas apply for *and obtain*, a conditional use permit, as PDS assured us they would be required to ("at minimum")?

Answer: Yes Petrogas (now ALA Energy) has applied for a conditional use permit (CUP). That CUP application is currently under review by County staff, including staff from PDS, Public Works and Health and Community Services. Please see the [ALA-Energy-Ferndale-Terminal project website](#) for the application materials and associated documents. When the final staff review is completed and the staff report is prepared with recommendations, a public hearing will be scheduled before the Whatcom County Hearing Examiner who will make the final decision on the CUP.

3. Was this "at minimum" standard accomplished?

Answer: Yes. See above answer on permit review status.

4. Was there an open public process, with Council and public participation, during both the Conditional Use Permit process and the SEPA EIS process that PDS assured us would happen?

Answer: Yes. There has been multiple opportunities for public input on both the CUP and the SEPA environmental review process, including both a Notice of Application comment period on the CUP application, a SEPA comment period and the final public hearing opportunity for the public to submit both written and oral public comments on the CUP (which has not yet been scheduled).

Whatcom County PDS created a web portal for the [ALA-Energy-Ferndale-Terminal project website](#) and SEPA review in order to create a transparent process where the public could review application and SEPA materials submitted by ALA. ALA submitted a substantial amount of information with its application including an analysis of potential impacts from greenhouse gas emissions and rail traffic, as well as vessel traffic impacts on Southern Resident Killer Whales. ALA also proposed a variety of mitigation measures. The County conducted what's called SEPA "pre-threshold consultation" with affected agencies, tribes and non-governmental organizations and issued a notice of application to receive public comments. The [ALA-Energy-Ferndale-Terminal project website](#) contains more than 100 pages of public comments and responses submitted to date.

The State Environmental Policy Act (SEPA) requires the lead agency, here Whatcom County Planning and Development Services, to make a "threshold determination" regarding whether there are potentially significant adverse environmental impacts from a proposed project that require preparation of an Environmental Impact Statement (EIS). That was what was initially contemplated under the compliance agreement between the county and ALA. However, the state SEPA Rules also allow an applicant to propose mitigation to environmental impacts that reduce those impacts below the level of significance triggering an EIS. Washington Administrative Code 197-11-350 allows a project applicant to propose mitigation that reduces environmental impacts below the threshold of significance requiring an EIS. This SEPA threshold determination is defined as a Mitigated Determination of Nonsignificance (MDNS) under the provisions of Washington Administrative Code (WAC) 197-11-350 and Whatcom County Code 16.08.100.

That is what has occurred here - PDS initially indicated an EIS would be required and the project applicant proposed additional mitigation measures and analysis reducing impacts below the SEPA EIS threshold. The County made several additional requests for analysis and information from ALA, including an independent study of impacts of vessel traffic on Southern Resident Killer Whales (SRKWs), additional information on greenhouse gas impacts and rail traffic. In response, ALA identified a number of additional proposed environmental mitigation measures, including participation in the Whale Reporting and Alert System (WRAS) and extension of voluntary vessel speed reductions outside of current US and Canadian program limits under the US Quiet Sound program and the Canadian Enhancing Cetacean and Habitat Observation Program (ECHO) boundaries. The voluntary vessel speed reductions proposed by ALA for vessels calling on the ALA terminal would include vessel trips throughout the Salish Sea boundaries. ALA also has made a voluntary \$100,000 contribution to the Quiet Sound program to be used to enhance and support Quiet Sound Orca whale protection measures.

The mitigation measures are included in the MDNS document issued on September 3, 2025. The MDNS is available [here](#) and includes 18 specific conditions ALA must comply with to address potential impacts. Additional conditions may also be added to the CUP upon conclusion of the county's permit review process and final decision by the Hearing Examiner.

5. Did Petrogas violate County Code related to expansions of fossil fuel transshipment?

Answer: The final Cherry Point code language (WCC 20.68.154) adopted by the County Council focuses on changes to transshipment facility capacity and not throughput changes. A new permit is needed when facility capacity is increased more than 10,000 barrels per day. While ALA increased facility throughput between 2016 and today, the facility engineering analysis submitted by ALA demonstrates that the facility capacity has not increased with any of the modifications made between 2016 and 2021.

6. Did Petrogas change the use of facilities, without permits, to increase fossil fuel transshipment?

Answer: ALA made a number of facility changes between 2016 and 2021 without receiving land use or construction permits. These modifications did not increase facility capacity, however some improvements did facilitate more transshipment volumes. The compliance agreement between ALA and the county required permit applications and SEPA review for the modifications made without proper permitting. ALA has also requested county and NWCAA permits for future modifications that will decrease air and greenhouse gas emissions including a new ground flare and a waste gas recovery project.

7. When Petrogas massively increased the amount of fuel moving through its facility, did they violate the moratorium Council had in effect that was designed to pause that?

Answer: The moratoriums contained language prohibiting the filing, acceptance or processing of permit applications for new or modified facilities:

"whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point unless the applications:

- 1) Were filed and complete prior to the effective date of this ordinance and vested pursuant to Washington statutes;*
- 2) Are for building permits for remodels, maintenance or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point will result; or*
- 3) Are necessary to protect the health and safety of the community."*

The facility modifications made between 2016 and 2021 were investigated and disclosed after the NWCAA discovered the ALA facility had not received permits for some modifications requiring air permits from NWCAA. When notified by NWCAA, County staff investigated and found a number of facility modifications had been made without county review and construction permits. ALA commissioned an engineering analysis of the facility that demonstrated none of the facility modifications during the pendency of the moratoriums increased facility capacity. At the time of the investigation the county had adopted the new Cherry Point regulations which require new land use permitting for facility capacity increases above 10,000 barrels per day.

After the county investigation, a compliance agreement was reached which required ALA to apply for a conditional use permit, certain building and construction permits and to comply with the State Environmental Policy Act (SEPA). The facility modifications made during the moratoriums did not increase transshipment capacity although facility throughput increased significantly during that period. The compliance agreement avoided litigation regarding moratorium provisions, which ALA argued applied only to facility capacity increases.

8. Did PDS pursue actions to enforce WCC that prohibited expansions of fossil fuel transshipment, with or without conditional use permits?

Answer: Yes. The compliance agreement referenced above required ALA to apply for a conditional use permit and to comply with SEPA environmental review. Additional building and construction permit applications were also required. The enforcement and compliance process is currently underway and ALA was required to provide detailed analysis of greenhouse gas emissions, vessel traffic and impacts on Southern Resident Orca. All of the permitting and SEPA documentation has been publicly noticed and made available on the county's [ALA-Energy-Ferndale-Terminal project website](#) to interested parties as documents were prepared and submitted. Appeal process information has also been provided as part of the public notice for the MDNS recently issued on 9/3/2025 and also available [here](#).

9. During the Cherry Pt. code update, Petrogas successfully lobbied Council to remove language regarding change of use permits. What was that proposal that was removed from the final draft?

- If that change of use language was in effect when the code changes were adopted, would PDS have had better tools to pursue code enforcement?

Answer: During the Cherry Point amendment public review process, the County Council assigned a work group composed of Cherry Point industry representatives and a sole representative from an environmental non-governmental organization to finalize recommended code amendments to the Council. This is a question that can only be answered by the Council.

10. What might code language look like that could clarify gaps between what Council clearly intended (no increased fossil fuel transshipment w/o more rigorous public process) and what occurred here (massive increase in throughput w/o any permits)?

*Answer: The final Cherry Point code language (WCC 20.68.154) adopted by the County Council focuses on changes to transshipment facility **capacity** and not **throughput** changes. A new permit is needed when facility capacity is increased more than 10,000 barrels per day. While ALA increased facility throughput between 2016 and today, the facility engineering analysis submitted by ALA demonstrates that the facility capacity has not increased with any of the modifications made between 2016 and 2021.*

11. When all is said and done, what will be the net increase in GHG emissions given the expansion at Petrogas, if / when they build out to the full shipping capacity? (What is that number?)

Answer: Please see the [ALA-Energy-Ferndale-Terminal project website](#) for the GHG emissions analysis. See NOAR-Appendix-E-ALA-Energy-Ferndale-Green-House-Gas-Analysis.

12. Is the PDS statement to CDN (see above link) effectively saying that PDS is not honoring its promise to Council and the public regarding the "at minimum" standards in the PDS press release (above)?

Answer: No. A CUP and rigorous SEPA environmental review are both required.

13. Why did PDS (Mark) make a determination of non-significance (MDNS), after promising people that, "at minimum" Petrogas must obtain a conditional use permit?

Answer: The question seems to be conflating the land use and building permitting process from the SEPA environmental review process. They are distinct separate processes. Please see the previous answers to question's #2, #3, #4 and #8. A CUP and rigorous SEPA environmental review are both required.

14. In taking this administrative action, has PDS done an end run around any Council deliberation of the matter - effectively killing the conditional use permit process that was promised?

Answer: No. A CUP and rigorous SEPA environmental review are both required.

15. How, and why, is PDS citing NWCAA as a reason for the Executive branch to unilaterally ditch the promised conditional use process?

Answer: Again, a CUP is required (and has been applied for) by ALA.

16. How does the public (or anyone) appeal the MDNS to the Hearings Examiner?

Answer: The MDNS requires a 14-day public notice and comment period. The MDNS will precede the actual CUP which is subject to a separate public notice and an open record public hearing prior to a final decision by the Whatcom County Hearing Examiner. The MDNS is an action appealable to the County Hearing Examiner under WCC 16.08.170 within ten days after close of the public comment period and issuance of a final SEPA determination. As provided under WAC 197-11-680, any SEPA appeal hearing must be consolidated with the public hearing on the underlying CUP.

The public notice provided when the MDNS was issued includes the web link for the [ALA-Energy-Ferndale-Terminal project website](#) where all of the project information that has been produced under the application.

17. What is the timeline on that?

Answer: The MDNS was issued on 9/3/2025. The 14-day comment period ends on 9/17/2025 and the ensuing 10-day appeal period concludes on 9/29/2025.

18. How does the public even know that this MDNS has been issued? Has there been sufficient, meaningful public notice?

Answer: Public notice requirements for the MDNS (SEPA threshold determination) include the SEPA distribution list which includes affected government agencies, tribes, non-governmental organizations and commenters on the project application. In addition, public notice is published in the local newspaper, posted on the PDS website and the Department of Ecology SEPA Register.