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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY**

FRIENDS OF THE SAN JUANS;
WHATCOM ENVIRONMENTAL
COUNCIL; RE SOURCES; WASHINGTON
CONSERVATION ACTION; SIERRA
CLUB; EVERGREEN ISLANDS

No.

LAND USE PETITION

Petitioners,

v.

WHATCOM COUNTY; ALA ENERGY,
LLC

Respondents.

INTRODUCTION

Petitioners Friends of the San Juans, Whatcom Environmental Council, RE Sources, Washington Conservation Action, Evergreen Islands, and Sierra Club bring this Land Use Petition pursuant to RCW 36.70C. This Petition concerns the expansion of a liquified petroleum gas (“LPG”) transshipment terminal (the “Terminal”) in Whatcom County at Cherry Point. The owner of the Terminal, ALA Energy, LLC, sought a Conditional Use Permit (“CUP”) from the County to authorize expanded vessel traffic to and from the Terminal and for multiple construction projects associated with the expansion.

1 Although Petitioners were largely successful in their appeal to the Whatcom County
2 Hearing Examiner, who did not grant the CUP and instead remanded to the County for additional
3 analysis, the Hearing Examiner rejected Petitioners' arguments regarding the scope of the critical
4 areas review triggered by the CUP. In brief, the Hearing Examiner ruled that the County does not
5 need to consider designated critical areas (specifically, marine shorelines) in the Critical Areas
6 Report affected by the project. Such finding threatens to undermine the remand process by
7 unlawfully constraining the scope of review and omitting consideration of key adverse impacts.

8 In accordance with RCW 36,70C.070, Petitioners set forth the following:

9 I. PARTIES

- 10 1. Petitioner Friends of the San Juans is at mailing address P.O. Box 1344,
11 Friday Harbor, WA 98250.
- 12 2. Petitioner Whatcom Environmental Council is at mailing address 1232 Roland
13 St., Bellingham, WA 98229.
- 14 3. Petitioner RE Sources is at mailing address 2309 Meridian St.,
15 Bellingham, WA 98225.
- 16 4. Petitioner Washington Conservation Action is at mailing address 1417 Fourth
17 Avenue, Suite 800, Seattle, WA 98101.
- 18 5. Petitioners Evergreen Islands is at mailing address P.O. Box 223,
19 Anacortes, WA 98221.
- 20 6. Petitioner Sierra Club is at mailing address 1304 39th Street,
21 Bellingham, WA 98229.
- 22 7. Petitioners are represented by Jan Hasselman and Lydia Heye at the Northwest

23 Regional Office of Earthjustice, 810 Third Avenue, Suite 610, Seattle, WA 98104. Petitioner
24

1 Friends of the San Juans is also represented by Magali Cota at P.O. Box 1344, Friday Harbor,
2 WA 98250.

3 8. The name and address of the local jurisdiction whose land use decision is at issue
4 is Whatcom County, Planning and Development Services, 5280 Northwest Dr., Bellingham, WA
5 98226. The County is represented by attorneys at Cascadia Law Group, 1201 Third Ave., Suite
6 320, Seattle, WA 98101 and the Whatcom County Prosecutor's Office, 311 Grand Avenue, Suite
7 201, Bellingham, WA 98225.

8 9. ALA Energy LLC is a party under RCW 36.70C.040(2)(b), as it is the applicant
9 for the underlying permit at issue in this petition. The mailing address of the applicant is 355 4th
10 Avenue SW, Calgary, AB T2P 2S6, Canada. ALA Energy is represented by Van Ness Feldman
11 LLP, 1191 Second Avenue, Suite 1800, Seattle, WA 98101.

12 II. IDENTIFICATION OF DECISION-MAKING OFFICER AND DECISION

13 10. The Whatcom County Hearing Examiner issued the two decisions that are
14 appealed in this petition following a three-day evidentiary hearing. On March 31, 2026, the
15 Hearing Examiner issued Findings of Fact, Conclusions of Law and Decision (“Final Order”).
16 Following Petitioners’ motion for reconsideration, the Hearing Examiner on April 30, 2026,
17 issued an Order on Appellants’ Motion for Reconsideration (“Reconsideration Order”). The
18 Final Order is attached as Exhibit A to this Petition, and the Reconsideration Order is attached as
19 Exhibit B.

1 III. FACTS DEMONSTRATING THAT PETITIONERS HAVE STANDING UNDER
2 RCW 36.70C.060.

3 11. Petitioners are non-profit organizations devoted to the protection of the unique
4 environment of the Salish Sea and surrounding lands. RCW 36.70C.020(4) establishes that such
5 organizations constitute “persons” who can seek review under LUPA.

6 12. Petitioners Friends of the San Juans, Whatcom Environmental Council, RE
7 Sources, Washington Conservation Action, Evergreen Islands, and Sierra Club have standing to
8 seek judicial review under RCW 36.70C.060 because their members are aggrieved and adversely
9 affected by the Hearing Examiner’s decision limiting the scope of critical areas review.

10 13. The 31 unpermitted projects (which have already been built) and two new projects
11 subject to the CUP have already prejudiced and will continue to prejudice Petitioners’ members
12 and their interests in the critical areas near the facility. Petitioners’ members have been and will
13 continue to be adversely impacted by the projects that have resulted in the expansion of the ALA
14 Energy Terminal’s capacity in several ways.

15 14. David Stalheim, a member of petitioner Whatcom Environmental Council, is an
16 avid fisher and frequently fishes along the transit routes of the ALA Energy Terminal vessels.
17 The increase in vessel traffic to the Terminal facilitated by the CUP harms species such as the
18 herring which play a critical role in the broader Salish Sea ecosystem and spawn at Cherry Point.
19 Mr. Stalheim is concerned that the dramatic reduction in Cherry Point herring will harm his
20 ability to continue to fish in the area.

21 15. Kim Clarkin, a member of petitioner RE Sources, spends time at Cherry Point
22 Reach, organizing events to educate community members about the marine ecosystem near the
23 shoreline. Ms. Clarkin worries about the increased risk of fuel spills from the increase in vessel
24 traffic at the Terminal, and how that may affect her events and time at the Cherry Point Reach.

1 16. Virginia Broadhurst, a member of petitioner Washington Conservation Action,
2 lives near the facility and is concerned about the impacts from increased air pollution as well as
3 the increased marine impacts from the facility’s expansion. Ms. Broadhurst worries about the
4 impacts from increased vessel traffic, scrubber discharge, and fuel emissions on her ability to
5 continue to kayak and enjoy the Salish Sea and areas near Cherry Point.

6 17. These interests are squarely in the scope of what the County and the Hearing
7 Examiner are required to consider before making a State Environmental Policy Act (“SEPA”)
8 determination and approving a CUP. These issues go to the heart of critical areas and SEPA
9 review that is required by state and local law.

10 18. A decision in this appeal would redress Petitioners’ injuries because it would
11 require a full and complete analysis of the impacts to marine critical areas caused by the project,
12 and, in turn, mitigation of those impacts. The Growth Management Act, RCW 36.60A, and
13 County Critical Areas ordinances prohibit degradation of critical areas without mitigation.

14 19. Petitioners exhausted their administrative remedies as required by law by
15 participating in the public review processes and by bringing a valid SEPA appeal to the Hearing
16 Examiner. The Hearing Examiner’s decisions constitute the final decision on all the issues
17 presented.

18 20. Appellants did not contest Petitioners’ standing below. The Hearing Examiner
19 found that Petitioners met all requirements to establish standing.

20 IV. CONCISE STATEMENT OF ERROR AND FACTS UNDERLYING THE ERROR

21 21. Although the matter below involved many issues, this petition addresses a single
22 narrow question. It concerns the application of Whatcom County’s critical areas ordinance, WCC

1 16.16, to designated critical areas along marine shorelines that are impacted by the Terminal’s
2 activities.

3 22. Petitioners’ underlying appeal arose under SEPA, RCW 43.21C. SEPA appeals
4 are governed by the statute, RCW 43.21C.075, its statewide implementing regulations, WAC
5 197-11-680, and implementing provisions of the Whatcom County Code (“WCC”), 16.08.170.
6 Petitioners challenged the validity of the Mitigated Determination of Nonsignificance (“MDNS”)
7 issued by the County to ALA Energy, LLC, which had applied for a CUP covering expanded
8 shipping traffic and numerous construction projects at the Terminal.

9 23. The Terminal consists of an upland area for LPG delivery, processing and storage,
10 and a marine area for loading marine vessels. LPG is received at the Terminal via pipeline or rail
11 cars, is processed, and then is loaded onto marine vessels at the pier via another pipeline. While
12 the construction projects addressed by the SEPA and CUP were carried out in the upland areas,
13 the CUP addresses the entire Terminal.

14 24. The construction projects were intended to, and did, increase the capacity of the
15 Terminal to receive and load LPG. The proposed CUP authorized up to 48 vessel calls annually
16 at the pier, a significant increase over historical levels. The arrival, loading, and departure of
17 such vessels—as well as related activities such as vessel and pier maintenance—have adverse
18 impacts on code-designated critical areas around the pier. These adverse effects include
19 alteration of habitat during berthing events, anchoring during low tides, risks of accidents and
20 fuel spills, and increased maintenance of the pier and berthing channel. Marine critical areas are
21 also threatened by accidents or spills in the upland portion of the Terminal.

1 25. The Hearing Examiner recognized some of these adverse effects generally, for
2 example, finding that the increase in vessel traffic to and from the Terminal would impact
3 Southern Resident killer whales without mitigation.

4 26. In addition to being a code-designated critical area, the area immediately
5 surrounding the pier is part of the Cherry Point Aquatic Reserve, protected under state and local
6 law. Cherry Point was once one of the most productive herring spawning areas in the Pacific
7 Northwest. However, herring spawning has sharply declined in the reserve, and there has been
8 no documented spawning for the last few years.

9 27. The construction projects have other impacts on nearshore critical areas, such as
10 an increase in stormwater runoff from the uplands portion of the Terminal into the marine
11 shoreline via an identified outfall.

12 28. The Critical Areas Report prepared by the applicant and accepted by the County
13 excluded marine and nearshore critical areas, focusing exclusively on the uplands portion of the
14 Terminal.

15 29. The Hearing Examiner’s Final Order upheld the scope of the Critical Areas
16 Report. It states: “Appropriateness of Critical Areas Report: The totality of the evidence leads to
17 the conclusion that the Critical Areas Report, its delineations, and its compliance with the law as
18 determined by the Department was appropriate.” Final Order at 18.

19 30. This statement appears “without extensive discussion” but nonetheless was to be
20 “applied to any review that returns” to the office of the Hearing Examiner in this matter
21 following remand. Final Order at 18.

22 31. Petitioners moved for reconsideration of that portion of the Final Order. The
23 motion explained how marine nearshore habitat around the pier was a code-designated critical
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1 area and how the project would have impacts on these areas. It also highlighted the undisputed
2 evidence that the marine nearshore was omitted from the critical areas assessment because it was
3 physically separate from the construction projects on the uplands portion of the Terminal.

4 32. In the Reconsideration Order, the Hearing Examiner denied Petitioners' motion to
5 reconsider as to this issue. As to this issue, the Order states in full:

6 A review of the evidence as to the appropriateness of the Critical Areas
7 Report and the delineated area it reviewed shows that it was appropriately
8 determined and approved by the Department, and such decisions are
9 supported by substantial evidence and appropriate deferral to the
10 Department's expertise. The law does not appear to require the Critical
Areas Report to include the marine nearshore habitat outside of the
delineated area or to require delineation of a greater area such that the
marine nearshore would be within such bounds. There is no basis under CR
59 to reconsider this matter.

11 33. This conclusion is in error. The Growth Management Act's ("GMA") critical
12 areas provisions and the County's critical areas ordinance are intended to preserve existing
13 functions and values of critical areas and prohibit actions that undermine those functions and
14 values without mitigation. The Growth Management Hearings Board has invalidated ordinances
15 that only require critical areas assessments for projects within critical areas, as opposed to
16 projects that are adjacent to or otherwise adversely impact critical areas. Similarly, state
17 guidance on adopting critical areas ordinances confirms that they must protect critical areas from
18 the effects of development projects that take place outside critical area boundaries.

19 34. Whatcom County's critical areas ordinance, WCC 16.16, similarly requires this
20 broader scope of review. Under the code, "no action shall be taken that results in *any* alteration
21 of a critical area . . . without prior authorization . . ." WCC 16.16.205(A) (emphasis added).
22 Alteration of critical areas "is prohibited" without mitigation. WCC 16.16.225. AS noted above,
23 increased vessel traffic adversely affects and hence "alters" designated marine critical areas.

1 35. The Hearing Examiner's findings with respect to the scope of the critical areas
2 review constitute an erroneous interpretation of the law, are not supported by evidence that is
3 substantial, and/or is a clearly erroneous application of the law to the facts.

4 V. REQUEST FOR RELIEF

5 36. Petitioners respectfully request that the Court issue an order which:

6 a. Reverses the Hearing Examiner's decision on the grounds stated above;

7 b. Declares that the applicants' Critical Areas Report violated the GMA and
8 Whatcom County critical areas ordinance because it failed to consider the impacts of the
9 proposal on marine nearshore critical areas that were outside the immediate project
10 footprint;

11 c. Directs the County to consider impacts to all critical areas that are adversely
12 impacted by the project in a revised Critical Areas Report;

13 d. Provides such other relief as is just and equitable under the circumstances.

14
15 Respectfully submitted this 20th day of May, 2026.

16 /s/ Jan E. Hasselman

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/s/ Magali Cota
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CERTIFICATE OF SERVICE

I, Azmera Melashu, declare as follows:

I am over the age of 18 years, not a party to this action, and competent to be a witness herein. I caused a true and correct copy of the foregoing document to be electronically filed with the Superior Court of the State of Washington for Whatcom County via eFileWA and delivered in the method as indicated below:

WHATCOM COUNTY AUDITOR Attn: Stacy Henthorn 311 Grand Avenue, Suite 103 Bellingham, WA 98225 360-778-5100	<input checked="" type="checkbox"/> Via Personal Service
WHATCOM COUNTY PROSECUTOR'S OFFICE Attn: Greg Greenan, Deputy Prosecutor 311 Grand Avenue, Suite 201 Bellingham, WA 98225	<input checked="" type="checkbox"/> Via Email: tgreenan@co.whatcom.wa.us tschusm@co.whatcom.wa.us mlee@cascadialaw.com spowers@cascadialaw.com <input checked="" type="checkbox"/> Via First Class + Certified Mail
WHATCOM COUNTY HEARING EXAMINER Attn: Lisa Bruner 311 Grand Avenue, Suite 105 Bellingham, WA 98225	<input checked="" type="checkbox"/> Via Email: hearingexamineroffice@co.whatcom.wa.us <input checked="" type="checkbox"/> Via First Class + Certified Mail
WHATCOM COUNTY PLANNING & DEVELOPMENT SERVICES Attn: Mark Personius, Director Attn: Amy Keenan, Senior Planner 5280 Northwest Drive Bellingham, WA 98226	<input checked="" type="checkbox"/> Via Email: MPersoni@whatcomcounty.us akeenan@whatcomcounty.us <input checked="" type="checkbox"/> Via First Class + Certified Mail
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Dated: May 20, 2026

/s/ Azmera Melashu
Azmera Melashu
Litigation Assistant, Earthjustice