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Christina Maginnis, ORCA Unit District Manager

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RE: Aquatic Lands Lease No. 20-A08488 Questions, AltaGas (ALA Energy)

Dear Christina,

Thank you for speaking to me on the phone last week. As I mentioned The Whatcom Environmental Council, Friends of the San Juans, RE Sources, Evergreen Islands, Washington Conservation Action and other environmental organizations have been reviewing the Major Project Permit Application ([MPP2024-00002](#)) and State Environmental Policy Act (SEPA) information for the ALA Energy Ferndale Terminal Project that Whatcom County is processing. Our review of this project turned up the questions we discussed regarding the Aquatic Land Lease entered into on January 23, 2003 between the State of Washington and Intalco Aluminum Corporation. This lease is to use bedlands of the State for maintaining a transportation wharf and pier for unloading aluminum ore, loading/unloading liquefied petroleum gas products and maintaining anchor buoys, and for no other purpose, details of which are described in greater detail in Exhibit B that are made part of the Lease.

Before I restate the questions we spoke about, I want to also let you know that we can find no record in the SEPA Register around the date that the Lease was executed that shows an environmental review for up to 48 vessels that can load and unload at the wharf and pier. We have also looked at the SEPA Register since 2001 for Intalco, PetroGas, AltaGas or ALA Energy, and while we can find some SEPA documents for upland activities, we can find no SEPA documents that review what

we see as significant increase in vessel traffic using this wharf and pier.

We presume that DNR often uses the SEPA process of local government before approving leases. The Lease indicates that there might be future uses that Intalco could have sought, but those "activities will be added...if a comprehensive evaluation of the impacts to the regional environment show an acceptable level of risk and no deleterious environmental effects from the increased ship traffic (including ballast water and noise), the materials transported, material handling practices, and all regulatory permits have been obtained." Our concern is the increased vessel traffic, not only from this facility, but the cumulative impact of increased vessel traffic in the Salish Sea and the impact on the environment, particularly the Southern Resident Killer Whales. If DNR has any records of an environmental review process and SEPA decision that addresses a maximum of 48 vessels, or if there was any

subsequent analysis that allowed other activities or the sale and assignment of the lease to a new company with different export priorities, we would ask that you provide us with that documentation.

Regarding the Lease, here are the questions you and I spoke about. I just want to make sure that I have properly captured what you said since I was doing stream restoration work when we talked and did not have the ability to take good notes. I realize that much of what we talked about were your initial reactions and that you need to confer with others within DNR for firm answers to these questions. Below is a summary of the questions we discussed, and my understanding of your responses. Please let me know if I've misstated anything:

- 1) You confirmed that the 2003 lease between the State and Intalco Aluminum Corporation is still the active lease, and that it was assigned to PetroGas in 2016, but no changes or amendments have been made to the lease. You also agreed that when AltaGas became the sole owner of PetroGas in 2022 the lease should have been assigned to AltaGas, but that to date AltaGas has not requested that change. You also said that PetroGas, not AltaGas, continues to make timely lease payments.
- 2) As we discussed, the lease states a total limit of 48 vessels per year, apportioned so up to 24 shiploads were for alumina ore and up to 24 shiploads were for unloading liquid petroleum gas (LPG) product? AltaGas in their application materials to the County states they can now use all 48 shiploads for LPG, but our reading of the lease limits them to 24 shiploads per year unless they request a change to the Plan of Operations for the pier. You said you also read the lease to limit them to only 24 shiploads per year for LPG at this point, and that to date AltaGas has not requested any changes or amendments to the lease that would allow them to use all 48 vessels for LPG.
- 3) Our review of the record shows that, beginning in 2015, the facility made a number of changes (many not permitted) that increased the facility's throughput for LPG deliveries and handling. According to the Northwest Clean Air Agency, "ship traffic "expanded from 2-5 berthing events per year [2015] to 26 in 2019." These findings are consistent with the Marine Vessel Analysis prepared by AltaGas that shows "higher noise levels at some locations is the greater volume of ship traffic to the terminal in 2023 compared to 2016". You also confirmed that AltaGas in the past few years have exceeded the 24 shiploads per year for LPG, and that such an exceedance could be viewed as a breach of the terms of the lease. You said that in such circumstances DNR would normally work to bring the tenant back into compliance by either making clear to them they cannot exceed the 24 shiploads per year, or need to work with DNR to make a change to the lease to allow a greater number of shiploads perhaps up to the 48 vessel limit.
- 4) You also mentioned that there had been a mistake in the transfer of ownership from Intalco to AltaGas, and that the actual bill of sales for the pier property was missed and not actually signed in 2016. Is that correct and in what year was the sales agreement actually perfected?

When we talked, I failed to ask you a couple of other questions that may be important to the pending SEPA review. Here they are:

- Does the lease allow ships to berth at the pier with drafts of more than 35 feet? The lease says the ***"pier is capable of receiving and berthing ocean going bulk carriers with drafts of approximately 35 feet."*** Yet our review of recent shipping berths at the wharf and pier show that there have not been any LPG carriers with

drafts of less than 36 feet, with the average being over 39 feet. The impact of deeper drafts is that they may be required to undock and move to deeper anchorages to ensure adequate water depth and then return to the pier one or more times to get the ship filled. If they undock, they may transit to the Cherry Point Anchorage or the Vendovi Anchorage, requiring more vessel traffic, noise and other environmental impacts. Our review of data confirms that this is a regular occurrence, none of which we can find any record of environmental review or shoreline permits to allow. Our review of data also shows LPG carriers anchoring within the Cherry Point Aquatic Reserve.

- Also, the lease is somewhat confusing using the terms “shiploads” and “vessels” interchangeably. It would be helpful if DNR could define these terms based on what is happening at the pier these days. For example, if a ship docks at the pier but due to the depth of its draft needs to undock and move to a deeper anchorage one or more times to get the ship filled how does that affect the number of vessels per year that can visit the pier?

Thanks again for talking to me about these issues, and for your attention to this matter. We would appreciate any corrections or elaboration you have to my recollection of our conversation, and a response to the additional questions as soon as possible because Whatcom County has indicated that they intend to issue a SEPA determination in early August and we wish to be prepared to provide accurate and complete comments in the narrow timeframe we anticipate will be provided to the public.

Thanks Again,



Carl Weimer, President
Whatcom Environmental Council