

November 16, 2020

Dave Jones  
Gary Mendivil  
ADEC  
P.O. Box 111800  
Juneau, AK 99811  
*Via email to dave.jones2@alaska.gov, gary.mendivil@alaska.gov*

Re: *Clarification Regarding* Request for Records Pursuant to Alaska Open Records Law  
Relating to the Proposed Air Quality Control Construction PSD Permit AQ1539CPT01 for  
Alaska Gasline Development Corporation's (AGDC) Liquefaction Plant

Dear Messrs. Jones and Mendivil,

I am sending this letter for two purposes. First, based on my conversation with Gary Mendivil on November 12, 2020, I understand that the letter I sent on November 10, 2020 (enclosed), which included the demonstration that the NPCA meets the elements in the rule for fee waivers and ADEC's certification form, ADEC needs the following statement from me on NPCA's behalf:

*I hereby certify that the information provided in the November 10, 2020 (enclosed) addressed all the requirements in the following rule:*

- 2 AAC 96.370. Public interest fee waiver or reduction for public records
- (a) For purposes of a public interest fee waiver or reduction under AS 40.25.110(d), and notwithstanding 2 AAC 96.220 and 2 AAC 96.230, a waiver or reduction shall be granted if the requester certifies and the agency finds that the requester has established that
- (1) the records are likely to contribute significantly to the public's understanding of the operations or activities of the state government;
  - (2) the records are not sought primarily for a purpose that is commercial or financial;
  - (3) the records are not sought by or on behalf of a person involved in litigation, including any judicial or administrative proceeding, arbitration, or mediation, with a public agency in which the records are relevant;
  - (4) the combined amount of all fee waivers and reductions granted to the requester and to any other requesters



acting in concert with the requester in making requests for the same or related records does not exceed \$500 during any period of 12 consecutive months; and (5) the requested fee waiver or reduction does not cause the requester to exceed the amount allowed under (b) of this section.

(b) A requester may not receive fee waivers or reductions under this section if the combined fee waivers and reductions granted by all public agencies to the requester under this section and 2 AAC 96.470 total more than \$500 during any period of 12 consecutive months.

Second, based on my conversation this morning with Dave Jones, this letter supplements the November 10, 2020, letter and clarifies the records requested in the Third Interim Release.

### Third Interim Release

All ADEC documents/records<sup>1</sup> related to the following:

- The notifications sent by ADEC to EPA and the FLMs regarding initial submittal of the PSD application from AGDC.
- The notifications sent by ADEC to the FLMs, EPA, and the permit applicant, which provided for review of the draft permit prior to public notice and comment.
- Any and all communication between ADEC and the FLMs regarding the proposed permit and application; and any and all communication between ADEC and EPA regarding the proposed permit and application, including:
  - FLM comments, questions or concerns regarding air quality related values (AQRVS) and regional haze/visibility impacts to Denali or any other Class I or Class II national park units and other federally protected public lands potentially impacted by pollution from the proposed permit for the liquefaction plant operations (including operations related to the plant such as flaring, pipeline compressor stations and heaters).
  - FLM comments, questions or concerns on ADEC's BACT analysis or emissions mitigation measures or lack thereof for the liquefaction plant proposed air permit, or facilities or operations related to it including the gas plant, compressor and heater stations and marine terminal.
  - All ADEC communications to and from EPA on this proposed permit, including communications related to ADEC's implementation of the permit programs as it relates to the proposed permit.

The term "documents" should be given the broadest possible interpretation and includes but is not limited to: writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, memos, files, meeting and conference call notes or minutes, notes of meetings and telephone calls, text messages (government and personal cell phones<sup>2</sup>), e-mails

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<sup>1</sup> This request includes internal and external records. Internal records includes those within ADEC, and between ADEC and other Alaska agencies, the Governor's office, State Legislators, and any other State entity and individual. External records includes all records with external parties not already released as part of Interim Releases 1 and 2, for example, the permit applicant, the press, other Federal agencies (e.g., FERC).

<sup>2</sup> Attorney General Opinion, AGO File No. 661-08-0388 (Aug. 21, 2008).

(government and private e-mail services<sup>3</sup>), electronic communications and chat messages, published or unpublished reports and studies, presentations and PowerPoints, consultations, evaluations, facsimiles, assessments, photographs and other images, mapping data, any other compilations of data from which information can be obtained. We would prefer to receive these documents electronically, if possible. This request is not intended to encompass the documents that ADEC has already made available to the public through its online sources.

The Alaska Supreme Court has repeatedly held that Alaska's public records act creates a presumption in favor of disclosure<sup>4</sup> and that the act's implicit legislative policy of broad public access requires courts narrowly construe exceptions to disclosure.<sup>5</sup> Furthermore, "[t]he legislative findings to the 1990 amendments to the public records act explain that public access to government information is a "fundamental right that operates to check and balance the actions of elected and appointed officials."<sup>6</sup> Therefore, we encourage you to release any documents that may technically be shielded by exemptions if there is no purpose served by withholding the requested documents. This request for documents is made in the public interest, and is meant to effectuate the strong public policy encouraging informed public participation in decisions that impact Alaska's environment and public health. Therefore, the public interest in disclosure outweighs the State's incidental interest in secrecy or allegations of harm in release.

If you determine that any of the requested documents are exempt from release, please identify and describe the exempted materials and specify the grounds for that exemption. If you determine that portions of the requested documents are exempt from release, please segregate those portions and release the remainder of the document.<sup>7</sup>

Please feel free to contact me if you have further questions.

Sincerely,



Sara L. Laumann  
Principal

cc: Stephanie Kodish  
Jim Adams

Enclosure

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<sup>3</sup> *Id.*

<sup>4</sup> *E.g., Anchorage Daily News*, 794 P.2d 584, 589 (Alaska 1990); *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1323 (Alaska 1982).

<sup>5</sup> *Gwich'in Steering Comm. v. State, Office of the Governor*, 10 P.3d 572, 578 (Alaska 2000); *Capital Info. Group v. State, Office of the Governor*, 923 P.2d 29, 33 (Alaska 1996); *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584, 589 (Alaska 1990); *Doe v. Alaska Superior Court*, 721 P.2d 617, 622 (Alaska 1986).

<sup>6</sup> Ch. 200, § 1, SLA 1990. *See also, Fuller v. City of Homer*, 75 P.3d 1059, 1061–62 (Alaska 2003), quoting *Gwich'in Steering Comm.*, 10 P.3d at 578; *Kenai Peninsula Newspapers, Inc.*, 642 P.2d at 1323 (quoting *MacEwan v. Holm*, 359 P.2d 413, 421–22 (Oregon 1961)).

<sup>7</sup> 2 AAC 96.330(a).