

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/records¹ 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 phones²), e-mails

¹ 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).

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

(government and private e-mail services³), 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 disclosure⁴ and that the act's implicit legislative policy of broad public access requires courts narrowly construe exceptions to disclosure.⁵ 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."⁶ 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.⁷

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

Sincerely,



Sara L. Laumann
Principal

cc: Stephanie Kodish
Jim Adams

Enclosure

³ *Id.*

⁴ *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).

⁵ *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).

⁶ 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)).

⁷ 2 AAC 96.330(a).

November 10, 2020

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

Re: 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 Mr. Jones,

Pursuant to Alaska Open Records Law, A.S. Code § 40-25-110 *et seq.*, I request copies of the following readily available public records on behalf of National Parks Conservation Association (NPCA), as soon as practicable, with all records made available no later than ten working days after this request, November 25, 2020. 2 AAC 96.325. To facilitate prompt access to the requested records, rather than waiting until all records are located, we request rolling release of the records as follows:

First Interim Release

- Notification sent by ADEC to EPA and the FLMs regarding initial submittal of the PSD application from AGDC.
- Notification 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.

Second Interim Release

- 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 for the liquefaction plant proposed air permit.
- 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.

Third Interim Release

- Any and all ADEC records related to the first two interim releases.

As requested, Attachment A, contains a completed ADEC record request form for this information.¹

If any document requested in this letter is not a readily available record, please contact me to determine how best to proceed. 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 phones²), e-mails (government and private e-mail services³), 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.

If ADEC uses search terms to search for documents, we request the opportunity to review and agree to them prior to searching.

Documents requested in the first and second interim release categories are for communications with *external* agencies and parties, and therefore should be released in their entirety as they are not exempt from release. They are not protected documents, they are between state and federal agencies, the information is required and analysis is key to informing the public, including with regard to projected adverse impacts from the project to protected public lands.

¹ NPCA continues to disagree with ADEC's assertion that these records cannot be shared with the public as part of the proposed PSD permit proceeding unless a formal records request is submitted. NPCA is left no choice but to submit this records request in light of the upcoming deadline for public comment on the proposed permit. In doing so, NPCA waives no rights to challenge ADEC's erroneous assertion.

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

³ *Id.*

The Alaska Supreme Court has repeatedly held that Alaska's public records act creates a presumption in favor of disclosure⁴ and that the act's implicit legislative policy of broad public access requires courts narrowly construe exceptions to disclosure.⁵ 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."⁶ 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.⁷

Because we are seeking to inspect public documents that should be readily available in a case file and part of ADEC's regularly conducted activities, there should be no fees associated with doing so.⁸ Even if there are associated fees for searching for the requested records, as discussed below, the Requester meets the fee waiver requirements.

1. The Records are Likely to Contribute Significantly to the Public's Understanding of the Operations or Activities of the State Government.⁹

The disclosure of the requested records is likely to contribute significantly to public understanding of the process ADEC followed and the information it considered in proposing the permit because the records sought are new and have not been disclosed to the public. The PSD regulations require ADEC consultation with the FLMs, and the proposed permit materials lack information regarding that consultation. Moreover, documentation of the required consultation and concerns raised by the FLMs are crucial to the integrity of PSD permit development process. Similarly, the proposed

⁴ *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).

⁵ *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).

⁶ 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)).

⁷ 2 AAC 96.330(a).

⁸ 2 AAC 96.100(b) ("Records that are readily available for public inspection are not subject to the procedures of this chapter. . . Records that are readily available for public inspection include . . . records pertaining to a public agency's regularly conducted and regularly recorded activities . . . [and] natural resource case files. . ."); 2 AAC 96.240(c) ("Fees may not be assessed as a condition of inspecting public records if the public agency receiving the request does not incur costs to search for the requested public record.").

⁹ AS 40.25.110(d), 2 AAC 96.370(a)(1).

permit materials fail to include information regarding ADEC's interactions with U.S. EPA on the proposed permit, and U.S. EPA serves an important oversight role in the implementation of Clean Air Act programs. Disclosure of the requested information would add new information to the public's understanding of any questions, concerns and comments raised by the FLMs and U.S. EPA. The records may also confirm, clarify, or contradict the set of documents or statements that ADEC has made available and/or are in the public domain. Indeed, since the requested records are not in the public domain, neither NPCA nor the public have an ability to evaluate them. Finally, the information requested supports the public's understanding of ADEC's current and future operations. The requested records will allow the public to better understand ADEC's permitting process and implementation of its regulations. Oversight of ADEC's processes and regulation implementation will be better informed by the release of these records, none of which have been presented to the public.

Disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject because NPCA plans to use the information it receives to educate its nearly 1.4 million members and supporters as well as the general public about the potential impacts of the proposed permit on Denali and any other Class I or Class II national park units and other federally protected public lands. NPCA has a long history of filling this educational role regarding developments impacting the National Park System.¹⁰

NPCA's expertise on issues related to the stewardship and preservation of national parks and park resources comes from its deep pool of policy experts, committed volunteers, staff lobbyists, community organizers, and communications specialists who inform and inspire the public and influence decisionmakers to ensure that national parks are well protected. As to this project and permit specifically, NPCA has long been promoting conservation of the environment and sustainable resource stewardship in Interior and Arctic Alaska through education and advocacy.

2. The Records are not Sought for a Purpose that is Commercial or Financial.¹¹

NPCA has no commercial or financial interest in the requested information. NPCA is a national non-profit organization that advocates for national parks, including protecting and enhancing America's National Park System for present and future generations, including Interior and Arctic Alaska. NPCA will make the requested information available to members and the general public upon request. NPCA does not stand to benefit financially from the disclosure of these records.

¹⁰ NPCA regularly sends informational notices about such developments to those audiences by e-mail, Twitter, and Facebook. NPCA's twitter feed alone has over 200,000 followers, so any social media activity that NPCA engages in on this subject will reach a broad swath of the public. NPCA also frequently comments on such matters to the media for publication; publishes and distributes fliers, a quarterly magazine, and bi-annual "field reports" reporting on those matters; and constantly updates its website, www.npca.org, where it publishes a significant amount of information about issues impacting the National Park System. Furthermore, NPCA regularly publishes reports on specific issues related to parks.

¹¹ AS 40.25.110(d), 2 AAC 96.370(a)(2).

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.¹²

NPCA is not involved in any pending litigation regarding issues related to this request.

4. A Requester May Not Receive Fee Waivers or Reductions if Such Requests Total More Than \$500 During 12 Consecutive Months.¹³

NPCA has received no fee waivers or reductions from the State of Alaska during the past 12 consecutive months.

Therefore we request that you provide the documents identified above without charge. If there is a fee associated with providing access to the requested documents and you decide not to grant a fee waiver, do not fulfill this request before contacting me and obtaining approval that the amount of the fee is acceptable. I am willing to discuss ways in which this request could be clarified or redesigned to reflect your system and to speed the search for the records, especially if doing so would result in no fee or a lower fee.

Please feel free to contact me if you have any questions or would like to discuss this request.

Sincerely,



Sara L. Laumann
Principal
Laumann Legal, LLC.
sara@laumannlegal.com
(303) 619-4373

cc: Stephanie Kodish, NPCA
Jim Adams, NPCA

Attachment

¹² AS 40.25.110(d), 2 AAC 96.370(a)(3).

¹³ AS 40.25.110(d), 2 AAC 96.370(a)(4), (5), 2 AAC 96.370(b).

Attachment A

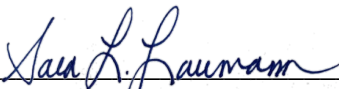
Request for Records under Alaska's

**PUBLIC RECORDS REQUEST
CERTIFICATE OF NONLITIGATION AFFILIATION
AS 40.25.122; 6 AAC 96.220**

I, Sara L. Laumann, on behalf of National Parks Conservation Association, hereby certify that

- (1) I am not involved in litigation, in a judicial or administrative forum, with the State of Alaska or a public agency to which the requested record is relevant;
- (2) I am not acting on behalf of or otherwise representing any person who is involved in litigation with the State of Alaska or a public agency to which the requested record is relevant; and
- (3) neither a notary public nor another official empowered to administer oaths is available at the time I make this certification of non-litigation affiliation.

DATED: November 10, 2020 at 7:30 pm



Requestor's Signature

Requestor's Name (please print): Sara L. Laumann, Principal
Mailing Address: Laumann Legal, LLC., Buchtel Blvd. S. #100236, Denver, CO 80210
Telephone Number: (303) 619-4373 Facsimile Number: _____ NA _____

I am requesting that the Alaska Department of Environmental Conservation provide me with a copy of the following public records related to the referenced subject above. ***As explained in the cover letter I am requesting ADEC waive the fees for this request.*** ~~I understand that if my request exceeds 200 pages I must pay for each copy, starting from page 1, at \$0.25 per page. I also understand that if the time to search and copy these records exceeds five hours in a calendar month, I must pay for staff time, at each staff's rate.~~

Subject of records requested: (please be as specific as possible; a very broad request can delay our ability to respond since it is usually necessary to request more information. Please use the back of this sheet if you need more space)

Please see cover letter