



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental
Conservation

OFFICE OF THE COMMISSIONER

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July 15, 2022

U.S. Army Corps of Engineers
Alaska District, Freedom of Information Act
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FOIA Officer:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. As Commissioner of the Alaska Department of Environmental Conservation (“ADEC”), an agency of the State of Alaska, I write to request Records on behalf of ADEC. *See Maryland Dep’t of Hum. Res. v. Dep’t of Health & Hum. Servs.*, 763 F.2d 1441, 1445 (D.C. Cir. 1985) (explaining a state or state agency is a “person” under the APA); U.S. DOJ, *Guide to FOIA, Procedural Requirements* at 19 (2021) (explaining that FOIA has the same definition of “person” as found in the Administrative Procedure Act at 5 U.S.C. § 551(2), which definition includes non-federal public organizations).

The requests below relate to the sites identified in Appendix A (the “Sites”). For each of the Sites, ADEC requests that the U.S. Army Corps of Engineers (“USACE”) promptly provide copies of the following Records,¹ or Records containing the following information, for *each* of the Sites:

1. All Records referencing, discussing, and/or identifying each Site.
2. All Records identifying, referencing, and/or relating to past or present ownership of each Site by any person, including but not limited to, any agency, department, branch, or entity of the United States government.
3. All Records identifying, referencing, and/or explaining the United States government’s past or present uses of each Site, including, but not limited to, descriptions of activities or operations undertaken by or on behalf of the United States government.
4. All Records referencing and/or discussing conveyance of property rights for each Site to any Alaska Native Corporation (“ANC”) under the Alaska Native Claim Settlement Act (“ANCSA”).
5. All Records referencing, identifying, describing, and/or delineating past or present Environmental Contamination² at each Site.

¹ For purposes of this request, a “**Record**” is defined as the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States government under Federal law in connection with the transaction of public business and in DoD possession and control at the time the FOIA request is made.

² For purposes of this request, the following additional definitions apply:

- “**Environmental Contamination**” includes, but is not limited to, the presence, suspected presence, or threat of one or more Hazardous Substances in the Environment: (a) which may result in pollution, contamination, degradation, impacts,

6. All Records analyzing, evaluating, referencing, identifying, describing, and/or delineating the party(ies) that caused or contributed to the Environmental Contamination at each Site.
7. All Records analyzing, evaluating, referencing, identifying, describing, and/or delineating the party(ies) that should be financially responsible for investigating, restoring, remediating, and/or cleaning up the Environmental Contamination at each Site.
8. All Records referencing and/or identifying each of the Sites as requiring environmental investigation, restoration, remediation, or clean-up under any Environmental Laws or to protect the Environment and/or human safety.
9. All Records referencing and/or identifying each of the Sites together with Alaska Statute 46.03.822 et seq.; Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.; or the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.
10. All Records referencing and/or identifying potentially responsible parties (also known as “PRPs”) under CERCLA or Alaska Statute 46.03.822, for the Environmental Contamination at each of the Sites.
11. All Records referencing, discussing, and/or identifying the U.S. Bureau of Land Management’s 1998 Report to Congress on Hazardous Substance Contamination of Alaska Native Claim Settlement Act Lands in Alaska.
12. All Records referencing, discussing, and/or identifying the U.S. Bureau of Land Management’s 2016 Update to the 1998 Report to Congress on Hazardous Substance Contamination of ANCSA Lands in Alaska (“2016 Update”).

damage, threat or injury caused by, related to, or arising from, in connection with or concerning Hazardous Substances, (b) that may affect, or pose an actual or potential threat or impact to, human health or the Environment, or (c) which is not allowed by Environmental Laws or which is not in compliance with Environmental Laws.

- **“Environment”** includes but is not limited to the waters of the United States, the waters of Alaska, the waters of the contiguous zone and the ocean waters, and any other surface water, groundwater, drinking water, water supply, property, premises, land surface, subsurface, subsurface strata, sediment, soil, air or atmosphere, as well as all human, animal, organisms, plants or natural resources located in, under or near thereon.
- **“Environmental Laws”** includes but is not limited to all United States federal and Alaska state and local statutes, laws, ordinances, regulations, codes, permits, licenses, authorizations and rules, and other provisions having the force and effect of law, in each case as amended, and including any judicial or administrative orders, determinations, writs, injunctions, judgments and decrees, concerning the Environment or Hazardous Substances, including but not limited to the generation, production, presence, use, distribution, handling, storage, treatment, transportation, testing, processing, discharge, release, threatened release, control, investigation or cleanup of any Pollutants, or the protection of human health, safety, natural resources, ecological impacts or animal health or welfare, or the Environment. Specifically, Environmental Laws includes, but is not limited to, Alaska Statute 46.03.822 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Oil Pollution Act, 33 U.S.C. § 2701; the Clean Water Act, 33 U.S.C. § 1151 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the National Environmental Protection Act, 42 U.S.C. § 4321 et. seq.; and the Endangered Species Act, 16 U.S.C. § 1531 et seq.
- **“Hazardous Substance(s)”** includes but is not limited to (a) any chemical, material, mixture, constituent, waste, water or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “toxic chemicals,” “contaminants,” “pollutants,” “solid wastes,” “industrial wastes,” “industrial solid or hazardous wastes,” “wastes” or words of similar import, under Environmental Laws or considered toxic, explosive, corrosive, reactive, flammable, ignitable, infectious, radioactive, carcinogenic or mutagenic; (b) any pesticide (or ingredients, degradation or daughter products or byproducts or constituents thereof), petroleum or petroleum products, petroleum hydrocarbons, gasoline, diesel fuel, natural gas or natural gas products, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls (“PCBs”), transformers or other equipment that contains dielectric fluid containing levels of PCBs, dioxin, radon gas, or noise; (c) any other chemical, material, waste, water or substance, (or constituent thereof), which is in any way regulated under the Environmental Laws or by any federal or Alaska state or local government authority, agency or instrumentality, including mixtures thereof with other materials, and including any regulated building materials such as asbestos and lead; or (d) any other chemical, material, waste, water or substance, or constituent thereof, concerning or that may affect or pose an actual or potential threat or impact to human health or the Environment.

13. All Records referencing, discussing, and/or identifying the comprehensive inventory of contaminated sites discussed in the 2016 Update, and any subsequent updates to the inventory.
14. All Records referencing, discussing, identifying, and/or explaining that lands conveyed under the ANCSA, as identified in the 2016 Update or any subsequent updates, contain contaminated or potentially contaminated sites that may require environmental clean-up, investigation, restoration, and/or remediation under any Environmental Laws or to protect the Environment and/or human safety.
15. To the extent that any of the requested Records are already publicly available, please identify the location, including web address, and title of the Record.

ADEC is charged with conserving, improving, and protecting Alaska's natural resources and environment to enhance the health, safety, and economic and social well-being of Alaskans. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(III) (all other requesters category for fee purposes). As a part of this charge, ADEC seeks to help Alaska Natives,³ through their ANCs, determine the extent of the contamination of the lands transferred to them by the United States government under the ANCSA (enacted in 1971), 43 U.S.C. §§ 1601-1629h, and to take appropriate action to address the contamination. In so doing, ADEC's purpose is to obtain justice for the Alaska Natives negatively impacted by the United States government's actions and operations on land transferred to them under the ANCSA.

ADEC requests a waiver of all fees for this request because this request is in the "public interest" and will "contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). More specifically, the requested Records will significantly contribute to the public understanding of the United States government's operations and/or activities, including, but not limited to, those of the USACE, on the lands conveyed to the ANCs under the ANCSA and the scope and scale of the contamination the United States government caused on these lands. This contamination continues to not only impacts Alaska's environment, but also affects the health and safety of Alaska Natives and Alaskans to this very day. There is no greater environmental justice issue in Alaska today. Once ADEC receives the requested Records, ADEC will share these Records with the ANCs, Alaska Natives, and the public to ensure the protection of the health, safety, and well-being of the Alaska Natives and Alaskans living on the lands transferred under the ANCSA or within the possible off-site migration path of the contamination. ADEC will also look to take action to address the contamination on these lands to protect Alaska Natives, other Alaskans, and the environment.

In short, this FOIA request is in the public interest and not for commercial purposes because it seeks information about the United States government's operations and/or activities on, and ownership of, lands transferred to the ANCs under the ANCSA and any contamination caused by the United States government on these lands prior to the transfer. In answering this request, ADEC respectfully reminds the USACE that each federal agency subject to FOIA has an affirmative duty to construe FOIA requests liberally. *Yagman v. Pompeo*, 868 F.3d 1075, 1079-80 (9th Cir. 2017) (compiling cases); U.S. DOJ, *Procedural Requirements* at 28 n.113 (same). This duty extends to liberally construing the fee-waiver request in favor of finding that ADEC has met the requirements for the waiver. *See Nat'l Sec. Couns. v. United States Dep't of Just.*, 848 F.3d 467, 473 (D.C. Cir. 2017) (explaining that "fee-waiver applications are to be 'liberally construed' in favor of finding that requesters meet FOIA's two-prong test").⁴

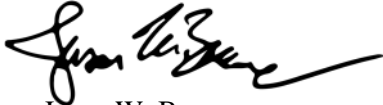
³ Alaska "Native" is used here as it is defined in ANCSA, 43 U.S.C. § 1602(b).

⁴ To the extent the USACE believes the exemption for inter- or intra-agency memorandums or letters applies, that exemption is limited to the "ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it"—e.g., the attorney work-product or deliberate process privileges. *DOI v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001). But, in no event, does attorney work-product protection apply unless the document's author anticipated litigation at the time the Record was created. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980). Additionally, the deliberate process privilege does not apply to documents created more than 25 years before the date of this request, 5 U.S.C. § 552(b)(5).

ADEC requests the information sought be provided in electronic format. If you need to reach me, please either call the number listed below during the hours of 9:00 am to 5:00 pm Alaska Time to discuss my request or email me at the email listed below.

ADEC looks forward to your response to this request within 20 working days, as required under FOIA. *See* 5 U.S.C. § 552(a)(6)(A).

Sincerely,

A handwritten signature in black ink, appearing to read "Jason W. Brune", with a long, sweeping underline.

Jason W. Brune,
Commissioner

555 Cordova St.
Anchorage, AK 99501
Email: dec.commissioner@alaska.gov

APPENDIX A

No.	Agency ID	Site Name	Latitude	Longitude
1	F10AK0041	AFOGNAK ISLAND COASTAL DEFENSE SITE	58.100278	-152.875
2	F10AK0400	AIR FORCE CACHE #01	68.341667	-166.375
3	F10AK0410	AIR FORCE CACHE #13	65.65	-150.066667
4	F10AK0411	AIR FORCE CACHE #14	65.916667	-154.216667
5	F10AK0414	AIR FORCE CACHE #17	64.783333	-156.983333
6	F10AK0415	AIR FORCE CACHE #18	64.366667	-158.283333
7	F10AK0416	AIR FORCE CACHE #19	62.733333	-159.975
8	F10AK0422	AIR FORCE CACHE #55	62.05	-162.983333
9	F10AK1028	AKUTAN NAVAL RS	54.144922	-165.729488
10	F10AK0841	AMAKNAK	53.890556	-166.535556
11	F10AK0842	AMAKNAK ISL	53.890556	-166.535556
12	F10AK0046	ANCHORAGE-TOK ACS	63.083611	-143.083611
13	F10AK0049	ANGOON MICROWAVE STA	57.499167	-134.580278
14	F10AK0999	ANUA RIVER BRIDGE	59.545801	-139.823893

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No.	Agency ID	Site Name	Latitude	Longitude
15	F10AK0851	ATKA AF AUX FLD	52.220278	-174.206389
16	F10AK1063	ATKA CAPE KUDUGNAX	52.228056	-174.064167
17	F10AK0995	BARTER ISLAND DEW STATION	70.116944	-143.666944
18	F10AK0059	BEAR CREEK RADIO RELAY	65.276389	-151.962778
19	F10AK0539	BETHEL 30 ENG TOPO BN	60.77235	-161.73512
20	F10AK0540	BETHEL 660TH ENG SITE	60.77235	-161.73512
21	F10AK0514	BETHEL ARPT	60.75803	-161.69192
22	F10AK0510	BETHEL BIA HDQRS	60.785157	-161.877371
23	F10AK0063	BETTLES ARPT	66.90153	-151.5442
24	F10AK1011	BETTLES RRS	66.898056	-151.542222
25	F10AK0323	BIRCHWOOD ARMY SITE	61.419722	-149.502778
26	F10AK0901	BRUHN PT. (KODIAK ISL)	57.700278	-152.544444
27	F10AK0323	BUSKIN BCH-KODIAK ISL	57.753611	-152.477778
28	F10AK0279	CAPE CHINIAK TRACK STA	57.598548	-152.17843

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No.	Agency ID	Site Name	Latitude	Longitude
29	F10AK0293	CAPE NOME ACS	64.469278	-164.947197
30	F10AK0074	CAPE PRINCE WALES AWS	65.616944	-168.083611
31	F10AK0294	CAPE RODNEY (MIL SITE)	64.643611	-166.391111
32	F10AK0002	CAPE SABINE DEW(LIZ-A)	69.021295	-163.846665
33	F10AK0001	CAPE THOMPSON NAV SITE	68.109079	-165.739585
34	F10AK0075	CATHEDRAL BLUFF ACS	63.386944	-143.731944
35	F10AK0339	CATHEDRAL POINT	63.386944	-143.731944
36	F10AK0503	CATHEDRAL RR SITE	53.74	-166.861667
37	F10AK0076	CHARCOAL ISL	57.04536	-135.35242
38	F10AK1060	CHEFORNAK TERN MOUNTAIN	60.07861	-164.2775
39	F10AK0013	CHERNOFSKI HBR SUP&STO	53.402426	-167.525041
40	F10AK0081	CHISTOCHINA ACS	60.465278	-145.951667

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No.	Agency ID	Site Name	Latitude	Longitude
41	F10AK0466	COLD BAY PAVLOF UNIT	54.986944	-162.594444
42	F10AK0295	CONSTANTINE PT END STA	53.950278	-166.433611
43	F10AK0550	CORDOVA ACS REMOTE REC	60.465278	-145.951667
44	F10AK0086	DAVIDSON-S LANDING	65.2399	-165.275
45	F10AK0653	DEERING NGS	66.07378	-162.71408
46	F10AK0090	DIAMOND RIDGE RR	59.6825	-151.606667
47	F10AK0846	DUTCH HARBOR	53.900278	-166.516944
48	F10AK0328	EAGLE RIV MISSILE ANX	61.29	-149.451111
49	F10AK0553	EKLUTNA ARMY ASP SITE	61.4525	-149.3725
50	F10AK0097	EKLUTNA ARMY SITES	61.456	-149.376
51	F10AK0554	EKLUTNA DISPERSAL SITE	61.448889	-149.290833
52	F10AK1006	ELSON NIKE	71.2675	-156.395556

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No.	Agency ID	Site Name	Latitude	Longitude
53	F10AK0289	ENTRANCE POINT, KODIAK	57.90843	-152.53221
54	F10AK0105	FORT GIBBON	65.187222	-151.996111
55	F10AK1024	FORT KENAI ARMY POST	60.555556	-151.267778
56	F10AK0017	FORT LEARNARD	53.96018	-166.60161
57	F10AK0280	FORT TIDBALL/LONG ISLAND	57.766667	-152.266667
58	F10AK0302	FORT TONGASS	54.773056	-130.736389
59	F10AK0693	FORT YUKON AIR PORT	66.56915	-145.27412
60	F10AK1079	GALENA FORMER EOD RANGE	64.75087	-156.94531
61	F10AK0696	GAMBELL	63.780278	-171.729444
62	F10AK0563	GLENNALLEN ACS COMM	62.108333	-145.457222
63	F10AK0319	GULKANA PREP & ARMY	62.171841	-145.432556
64	F10AK0122	HOONAH RRS	58.1275	-135.433056
65	F10AK0568	ILIAMNA PETROLEUM STO	59.740556	-154.899167

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No.	Agency ID	Site Name	Latitude	Longitude
66	F10AK0131	KANAKANAK RADIO REL AX	58.991667	-158.543889
67	F10AK1034	KING COVE NAVAL FACILITY	55.086389	-162.284722
68	F10AK0095	KODIAK (E CPE HBR DEF)	57.900278	-152.366944
69	F10AK0840	KODIAK CG SUP CNTR	57.700278	-152.700278
70	F10AK0859	KODIAK TRACKING STA	57.583611	-152.216944
71	F10AK0153	LYMAN ANCH ACS SUBCABL	55.538056	-132.268611
72	F10AK0007	MANNING POINT DEW	70.121111	-143.531389
73	F10AK0504	MENTASTA ACS RR SITE	62.926944	-143.795833
74	F10AK0158	MIDDLETON ISL AFS	59.461111	-146.299444
75	F10AK0162	MOSES POINT GARRISON	64.695833	-162.053611
76	F10AK0996	MOUNTAIN VILLAGE	62.088333	-163.709444
77	F10AK0969	NE CAPE (ST LAWRENCE ISLAND)	63.326667	-168.968889
78	F10AK0853	NIKE SITE JIG	64.530833	-146.980556

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No.	Agency ID	Site Name	Latitude	Longitude
79	F10AK0854	NIKE SITE LOVE	64.983611	-147.883611
80	F10AK0744	NOORVIK NG SITE	66.829167	-161.031944
81	F10AK0283	NORTH CAPE HARBOR DEFENSE, KODIAK	57.966944	-152.416944
82	F10AK0037	NORTH RIVER RRS ANX	63.88718	-160.5215
83	F10AK0177	NORTHWAY ACS	63.0122	-141.80448
84	F10AK0347	NORTHWAY STAGING FLD	62.97277	-141.94407
85	F10AK0178	NULATO RADIO STA	64.700278	-158.000278
86	F10AK0583	N-WAY SPUR ACS PLINE R	62.936667	-141.580278
87	F10AK0747	OCEAN CAPE RR SITE	59.53901	-139.80827
88	F10AK0187	PLATINUM BATTALION	59.0119	-161.81912
89	F10AK1066	POINT HOPE ARMY CAMP	68.34901	-166.73688
90	F10AK1044	POINT HOPE WEATHER STATION	68.350278	-166.789444
91	F10AK1054	POINT LAY	69.755	-163.051111

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No.	Agency ID	Site Name	Latitude	Longitude
92	F10AK0190	PORT LIONS ACS COMM ST	57.863611	-152.893611
93	F10AK0068	PT BISHOP ACS SUBCABLE	58.2075	-134.191667
94	F10AK0200	SALCHA ARMY ASP	64.531389	-146.972778
95	F10AK0204	SANAK ISLAND ARMY AWS	54.461165	-162.739751
96	F10AK0386	SAND PT NAV AUX AIR FA	55.352222	-160.484722
97	F10AK0263	SKWENTNA AIRCRAFT COM	61.96812	-151.21972
98	F10AK1042	ST. PAUL NAVAL RADIO STATION	57.154722	-170.239444
99	F10AK0489	TANANA NGS	65.17351	-152.08428
100	F10AK0798	TETLIN ARMY CP	63.314167	-142.649722
101	F10AK0376	TIGALDA ISLAND	54.100415	-165.06433
102	F10AK0237	TRANS-CANADIAN RAIL S	64.365278	-148.49
103	F10AK0240	TYONEK ACS COMMS SITE	61.068611	-151.143333
104	F10AK0241	UGADAGA BAY STA	53.830285	-166.399918

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No.	Agency ID	Site Name	Latitude	Longitude
105	F10AK0036	UNALAKLEET AFSTA	63.916389	-160.758611
106	F10AK0783	UNALAKLEET NGS	63.915556	-160.690833
107	F10AK0596	UNALAKLEET REC ANX	63.891111	-160.508889
108	F10AK0597	UNALAKLEET REC FISH CP	63.850278	-160.666944
109	F10AK0015	UNALGA ISL NAV RADIO	53.975205	-166.13988
110	F10AK0246	VOLKMAR RIVER SITE	64.071944	-144.719167
111	F10AK0270	WHITE MT NAT-L GUARD	64.689167	-163.403889
113	F10AK0251	WILDWOOD AFS	60.586944	-151.2925
113	F10AK0278	Woody Island Naval Reservation	57.77956	-152.357823