

**From:** [Aaron O'Quinn](#)  
**To:** [donlingoldeis, POA](#)  
**Cc:** [Tom Kennedy](#); [Phil Blumstein](#)  
**Subject:** [EXTERNAL] Donlin Gold Draft EIS comment  
**Date:** Tuesday, May 31, 2016 4:43:54 PM  
**Attachments:** [40T3762-Final Comment Letter to USACE from BNC regarding Donlin DEIS.PDF](#)

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To Whom It May Concern:

Attached, please find Bethel Native Corporation's comments to the Donlin Gold Project Draft EIS.

Sincerely,

Aaron O'Quinn

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Via Email: POA.donlingoldeis@usace.army.mil

Department of the Army  
Alaska District, U.S. Army Corp of Engineers  
Regulatory Division  
Attn: Keith Gordon, Project Manager  
Post Office Box 6898  
JBER, Alaska 99506-0898

Re: Donlin Gold Project Draft Environmental Impact Statement (“DEIS”)

Dear Mr. Gordon:

We are submitting these comments on the above-referenced DEIS for the proposed Donlin Gold Project (the “Project”) on behalf of Bethel Native Corporation (“BNC”), the Alaska Native village corporation for the Bethel area, established pursuant to the Alaska Native Claims Settlement Act of 1971, as amended (“ANCSA”). BNC has over 1800 shareholders, sixty percent of whom reside in the Bethel, Alaska area. They work in the area and rely on the Kuskokwim River in some capacity in nearly all facets of their daily lives. Their lives and the business interests of BNC will be directly impacted by the Project.

Since the publication of the Notice of Intent to prepare an Environmental Impact Statement (“EIS”) in December of 2012, BNC struggled to be meaningfully heard by the U.S. Army Corps of Engineers (“USACE”), especially in relation to the impacts that BNC will directly experience as a result of planned barging operations on the Kuskokwim River and at the Donlin Gold Bethel Port. These issues are of utmost importance to the corporation and its shareholders, and as an Alaska Native Corporation (“ANC”), BNC is legally entitled to consultation with the USACE on a government-to-government basis prior to decisions being made on the Project to ensure that BNC has an effective voice in project planning.

The allotted time for public comment does not give the most impacted project stakeholders adequate time to review and understand the DEIS. The document itself is thousands of pages long, technical problems plagued the publication website, which prevented BNC from ready access to the most detailed and in-depth technical materials for a large portion of the comment period. Problems accessing the DEIS materials were undoubtedly much worse in rural Alaska where communications infrastructure is less developed or, in some cases, completely lacking. Without meaningful access to the DEIS for significant portions of the



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comment period, the cities, village councils, village corporations and individual stakeholders have not had a legally sufficient opportunity to review the DEIS. On February 9, 2016, the City of Bethel passed a resolution highlighting the breadth of the DEIS and the magnitude and potential impact of the Project on the region requesting an additional six month time period to review the DEIS. BNC's Board has passed a similar resolution. The 30-day extension of the comment deadline is inadequate given the seriousness of the technical problems, the volume of information presented and the unprecedented scope of the Project. BNC renews its request to extend the deadline for initial public comments until no earlier than October 31, 2016.

The DEIS ignores many of the concerns BNC raised during the scoping process, and others are barely analyzed. It is for these reasons and others that BNC submits these comments in opposition to the DEIS in its current form.

Specifically, the DEIS inadequately analyzes the direct effects the proposed port in Bethel will have. Bethel is the center of the region. During barging season Bethel is the commercial and transportation hub for nearly all of the villages of the Yukon-Kuskokwim region. Most goods, fuel, and freight bound for households in the region are distributed from Bethel. As the DEIS points out, the shipping season on the Kuskokwim River is short and disruptions to traffic on the river or at the Bethel Port distribution site lead to costly shipping delays. It is therefore critical that the DEIS analyze the impacts the Project will have in Bethel, as required by law.

The importance of a thorough and complete environmental analysis for this region is paramount. The historic legacy of mining in the Kuskokwim River basin is everywhere. The cleanup of the mine at Red Devil and other sites has become a great expense to our government and has left the Kuskokwim River and its food chain with unacceptable heavy metal pollution. The Project could prove transformative to the region, bringing with it new jobs, population growth, and wealth, but these failed legacy mining projects highlight the need for the most comprehensive review of all Project elements. This Project will undoubtedly affect subsistence lifestyles, patterns of energy use, and transportation. Increased barge traffic and activity at the Bethel Port will greatly affect these components of BNC's shareholders' lives. Questions about these direct impacts to shareholders' way of life are the impetus for our concerns and review of the DEIS reveals that BNC remains in the dark as to how it and its shareholders will be affected.

The DEIS fails to conform to legal requirements. Specifically, the DEIS inappropriately segments the Project. Environmental analysis of known, definite portions of the Project, namely the transportation facilities at Bethel, has been segmented and treated as if their occurrence is merely a possibility when, in fact, they are most likely the first components of the Project to be constructed. The DEIS fails to adequately state the cumulative impacts of the

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Project and fails to analyze direct impacts relating to the proposed expanded Bethel Port facilities, the new fuel tank farm in Bethel, and the increase of ocean-going and river barges staging within the City of Bethel and traversing 199 miles of the Kuskokwim River from the Donlin Gold Bethel Port to Crooked Creek and an additional segment from Bethel to the Bering Sea.

**The DEIS Improperly Segmented and Failed to Take a Hard Look at all Components of the Project and Failed to Consider Less Harmful Alternatives**

The USACE's treatment of the Bethel facilities has been problematic from the beginning. In April of 2014, BNC commented on USACE permit application POA-2014-64: a bulkhead permit on the Kuskokwim River at Bethel. The application contained detailed design specifications, but stated its purpose and need as only "to improve efficiency and safety on cargo barge operations at the Knik Construction Yard." BNC's comments expressed skepticism that the purported scope of that project was genuine, as the dock depicted in the application matched the exact specifications of the dock proposed in the Project's transportation plan scoping documents. As a direct result of BNC's input, this permit application was shelved.

The problematic treatment of the Bethel facilities continues in the DEIS. Instead of reviewing them as direct effects of the Project, the USACE instead mischaracterizes the facilities as "indirect effects." The USACE has, once again, illegally segmented the Bethel facilities from the Project as a whole and conducted only a minimal level of environmental analysis in doing so. This is misleading to the public and antithetical to the mandate of NEPA, which requires a hard look at environmental effects of proposed actions.

Purportedly, because a third party "would determine what amount of additional storage space and waterfront structures, if any, would be required" and "would be responsible for applying for and obtaining any permits that may be required" the USACE is justified in this "indirect effect" characterization. There is no rationale to the assertion that involvement of a third party designer/operator of the Donlin Gold Bethel Port facilities in some way renders these Project components "indirect." The Donlin Gold Bethel Port facility and Tank Farm are not "indirect effects" of the Project, rather they are actual, integral components of the Project.

Just as the Project would be unable to operate without the supply of energy from its proposed natural gas line, the Project would similarly be unable to operate without the Bethel facilities, nor would its construction be possible in the first place. All materials, with the exception of natural gas, imported and exported to and from the mine pass through the Donlin Gold Bethel Port. The projects in Bethel are wholly unnecessary without the Project upriver, they are already planned and the plans were prepared at Donlin's request. These particular

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components also have the potential to affect the greatest number of stakeholders throughout the life of the Project due to the increase in barge traffic they will both facilitate and their location in the population center of the region. As such, a “hard look” at their consequences is particularly important. The USACE has no rational or legal basis to avoid analyzing these components in greater detail.

The USACE has all of the information it needs to perform a detailed analysis regardless of how it chose to characterize the Bethel facilities and still, it prepared a legally deficient analysis. The USACE is well-aware of the Bethel facilities design features. Detailed plans for the facilities were revealed in the POA-2014-64 permit application. These detailed plans made their way into graphics found in the transportation plan of the Project application, and the DEIS contains detailed discussions of the Bethel Port facility and Tank Farm and how they are to operate, including cargo volumes, barge trips, and barge berthing. Notably absent from the DEIS are detailed schematics and barge traffic analyses for the Bethel Port similar to those submitted for the upriver dock facilities at the Jungjuk Port site. Construction is apparently already underway for the Donlin Gold Bethel Port, yet the USACE and Donlin have not presented or analyzed the impacts of this project component with the requisite level of detail as they have for the upriver components, though this component is as necessary as any of those.

Despite having such detailed information at its fingertips, these mischaracterized “indirect effects” of the Bethel Port in the DEIS are given cursory treatment by the USACE with their analysis completely want for technical details. Such a basic level of analysis of project components that are essential to the success of the Project simply cannot be meaningfully analyzed by the commenting public at large, much less by BNC or its shareholders. This oversimplified environmental review will undoubtedly lead to a segmented environmental analysis of the Project. By analyzing these components as indirect effects today and later conducting an environment analysis of them as discrete projects when their permits are applied for amounts to illegal segmentation of their environmental impacts and deceives the commenting public of the true scope of the expected environmental consequences of the Project as a whole, a practice prohibited by NEPA.

BNC does not oppose the Project, recognizing its potential as an economic accelerator in the region. However, certain substantive analyses of the Donlin Gold Bethel Port fail to comprehensively analyze and quantify the impacts the Bethel facilities will have on the Public.

For instance, the DEIS states that the creation of “three beneficial acres of new ground . . . would be localized and beneficial . . . useful for community and industrial purposes.” (DEIS 3.7-71). Such glib assurances do little to explain how the community would benefit from an exclusive, highly industrialized and private port facility, which will undoubtedly make sweeping changes to the area’s long-term geomorphology and sediment deposition processes.

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Work at the Donlin Gold Bethel Port, including fill activities with existing terrestrial soils, has the potential to disturb existing known and unknown environmental hazards that exist at the proposed site. The DEIS contains discussion that there are multiple known hazard sites at the Donlin Gold Bethel Port and Tank Farm, but only superficial assurances that “distance, hydraulic gradients, and/or presence of permafrost” render these hazards benign. (DEIS 3.2-130). The possibility of renewed environmental or health hazards from existing sites disturbed by construction activities is an impact that the public has a right to know about and the Project proponent a moral obligation to disclose. Where are these sites and what activities are planned in their vicinity? Moreover, there is no meaningful discussion of how distance, hydraulic gradient and (melting) permafrost removes them as risks to the public.

Absent from the DEIS is a technical discussion of the impacts which the Donlin Gold Bethel Port location and design will have on sediment deposition in the bed of the Kuskokwim River at Bethel and the adjacent areas. The river is a common resource and a transportation corridor used by all residents of the region in one way or another. Alteration of such a significant length of shoreline (nearly one-fifth of a mile) at a navigationally challenging bend in the river will most certainly lead to altered deposition patterns of sediments and gravel. As a corporate citizen reliant on the river for its own prosperity, BNC expects a revised DEIS to include additional information from a reliable third party, which analyzes the impacts the sheet pile dock and resulting altered river flow has on sediment deposition in the vicinity of the dock. This information is critical to inform the public of additional costs and upkeep requirements to the public navigation channel resulting from Donlin’s proposal and is especially important for BNC’s shareholders, many of whom utilize adjacent waters for subsistence activities and will be greatly affected by altered flow of the river.

Moreover, the USACE failed to look at less harmful alternatives in Bethel. Other land in Bethel that is suitable for the Project’s needs and available to Donlin on commercially reasonable terms could be economically developed as a port without the major negative environmental impacts a revised DEIS will likely reveal with the current site. The DEIS’s summary elimination of this alternative because of “increased environmental impacts” does not hold water. The expansion of the current facilities will concentrate activity at a choke point and push out existing users, leading to increased environmental impacts of its own, the magnitude of which the DEIS fails to quantify. Failure to seriously consider alternative sites for this critical facility is arbitrary and capricious. Only after USACE takes a hard look at these project components and their alternatives and publishes those findings can the people of the region truly understand what effect this Project will have on their lives and on the environment upon which those lives depend. The USACE is required to assess the effects of the Project and those of various alternatives, not advance the commercial interests of the project sponsor.

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Because these facilities are integral to the Project, certain to be built, and envisioned with finality, the USACE is compelled by law to analyze them in the same way it analyzed other project components. The USACE must perform additional environmental analyses on these proposed Bethel facilities that fully account for all of the facilities' effects on the environment. Especially critical in this analysis is their interface with the Kuskokwim River. The public must know how barges will be maneuvered through the city, how river traffic will be managed, and how these planned operations and altered river flow affect subsistence, recreation, the costs of goods, and the villages' access to their own barged supplies.

The DEIS must analyze, in the Bethel area, the socioeconomic effects the facilities will have on the population of the City of Bethel including local job creation or transient worker populations flown in to operate them. These integral components must be analyzed with the same level of care and detail as that which was conducted for other components of the transportation system, including the haul road and the Angyaruaq Port site.

### **The DEIS Fails to Comply with the Congressional Mandate to Consult with Alaska Native Corporations**

The USACE failed to comply with the statutory requirement that all Federal agencies consult with ANCs. PL 108-199 section 161 and PL 108-447 section 518 require the USACE to consult with ANCs on the same basis as Indian tribes under Executive Order No. 13175. The Department of Defense's own policy documents require this.<sup>1</sup>

USACE consulted with Federally-recognized Alaska Native villages under this mandate. However, it failed to conduct required consultation with any of the ANCs affected by the Project. Congress has unequivocally required this. The DEIS should be withdrawn and reissued only after legally required consultation with ANCs is complete.

The CEQ encourages Alaska Natives to participate as cooperating agencies with the lead agency in drafting the EIS and the CEQ regulations require the lead agency to consult with Natives early in the NEPA process. Indeed, many Native villages availed themselves of these consultation arrangements and several participated at a high level as Cooperating Agencies. However, ANCs were not consulted at all, let alone early in the NEPA process.

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<sup>1</sup> See Note (a) to the Preamble to the American Indian and Alaska Native Policy and Department of Defense Instruction Number 4710.02: DoD Interactions with Federally-Recognized Tribes. See also Wyoming v. United States Dep't of the Interior, 136 F. Supp. 3d 1317, 1346 (D. Wyo. 2015) (Failure to follow agency policies and procedures regarding the duty to consult with tribal entities is arbitrary and capricious).

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BNC is the ANC for Bethel, the transportation and logistical hub for the Project. BNC owns 230,506 acres in and around the City and represents 1800 shareholders, 1200 of them live and subsist in and around the City. It would be difficult to find a source of traditional ecological knowledge that is more comprehensive. BNC's shareholders and their ancestors have occupied the lands of the Bethel area for millennia and are familiar with its plants, fish, and terrestrial animals. Moreover, as users of the river and port area themselves, they bring first-hand knowledge to the analysis of environmental impacts of increased barge traffic and port activities on their lives as well as the ecology of the area. BNC could serve as an information clearinghouse – able to contact and engage shareholders directly and efficiently. Moreover, as a for-profit corporation, BNC has the means and resources to staff and commit as a Cooperating Agency. Undoubtedly, other ANCs in the region can provide similar input.

The USACE failed to comply with its legal mandates by not engaging with ANCs on a government-to-government basis. This failure leaves the DEIS legally deficient and the USACE must retool the consultation component of the DEIS and allow full public review and comment before it may move on to the next step in the environmental review process. It must fully consult with ALL of the Alaska Natives in the Project area, including the ANCs.

### **The DEIS is Incomplete: ANILCA §810 Process Has Not Been Finalized**

ANILCA §810 requires Federal land management agencies to assess proposed actions for impacts on subsistence resources within the entire Project. In the case of the Project, BLM conducted this analysis and found that subsistence uses will be significantly impacted by the transportation infrastructure, the pipeline, and the mine site. The BLM indicated that they will consult with the affected communities and publish their findings and public input in the Final EIS.

BNC objects to this sequence: it is contrary to NEPA procedures. The purpose of a DEIS is to allow the public to comment and the agency to integrate those comments into its analysis before the FEIS is released. By the proposed process, the public will be denied this opportunity. The ANILCA §810 analysis in the FEIS will look markedly different from the §810 analysis prepared for the DEIS. The BLM is set to hold hearings in at least 20 different communities as well as present its findings to the applicable §805 subsistence boards. The comments received at these meetings and from the boards will no doubt yield insightful information. Subsistence uses are of paramount importance to shareholders and other members of their communities and the region at large. The final §810 findings will provide meaningful information, information that is relatable to non-scientists and aggregated from those individuals dependent on subsistence as a way of life. By withholding this information from release until the FEIS stage of the process, the USACE and BLM are short circuiting the public involvement process and have published the current DEIS before it was legally complete. As

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such, the USACE and BLM must complete the notice and hearings required under ANILCA §810, aggregate the public commentary they receive and republish the completed DEIS with these findings to allow the public to fully understand the scope of the Project and its effects.

In conclusion, BNC requests that the USACE resolve the issues and correct the legal deficiencies described above, and republish the DEIS providing a reasonable comment period sufficient for meaningful review given the volume of information and importance of issues at stake. As it stands, the DEIS lacks key analysis of the direct effects of necessary components, information is absent because USACE did not fulfill legal obligations to consult with impacted ANCs, and was published without the required public input related to the Project's admitted significant restrictions on subsistence activities. BNC appreciates the opportunity to comment.

Very truly yours,

LANDYE BENNETT BLUMSTEIN LLP



Philip Blumstein

cc: Bethel Native Corporation