



THE STATE
of **ALASKA**
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Department of Natural Resources

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**APPLICATION FOR PERMITS TO MINE IN ALASKA (APMA)
LAND USE PERMIT & RECLAMATION PLAN DECISION**
APMA F20242875 *Bonanza Channel Dredging Project*

INTRODUCTION

This decision concerns the application of IPOP, LLC, initially submitted in November 2023, but remaining incomplete until January 13, 2025, to the Division of Mining, Land and Water (Mining Section) "the Division" seeking a Land Use Permit and Reclamation Plan Approval for suction dredging and reclamation activities on State of Alaska Mining Claims in the Nome, Alaska area. Given the scope of the proposed project and the extensive administrative record, the Division undertook a wide-ranging review of the application, considering relevant statutes, regulations, and public input, to determine whether the proposed activity meets the necessary criteria for approval, potentially with specific conditions, or whether denial is warranted. Having reviewed all materials, The Division is satisfied that the conclusions of the decision are based on fact, regulation, and law. The following decision outlines the key findings and rationale that support the ultimate determination.

REQUESTED LAND USE AND PROPOSED ACTIVITY DESCRIPTION

Broad Proposed Activity

IPOP is proposing to use a specialized cutterhead suction dredge for placer gold on 32 state mining claims within the Bonanza Channel and Tidal Lagoon located approximately 28 road miles east of Nome along the Nome-Council Highway on the Seward Peninsula, Alaska. The proposed project name is Bonanza Channel Placer Project (BCPP). The Cutterhead named the Super Diamondback is 70ft x 36 ft vessel with a 36" Vosta Cutterhead, a 10" diameter intake nozzle and 625 HP motor capable of processing 285 cubic yards/hr. Wastewater discharge rate of 8,500 gallons per minute. The maximum depth the cutterhead can reach is 31 ft. The custom dredge is specially designed to operate in shallow inland waterways. The cutterhead is connected to a 40ft x 70ft processing barge by a 300ft to 600ft long 10" floating pipe. The cutterhead and processing barge are not self-propelled but are mobile using vertical ground anchors called "spuds". Two small tender boats, 25ft or less, will be used to move and position the cutterhead and processing barge. The project is proposing a predominantly season summer/fall mining operation with the potential for winter core drilling exploration on the ice once the channel and lagoon have frozen solid.

Access

Access to the project location is approximately 28 road miles east of Nome along the Nome-Council highway. The Nome Council Highway is usually open to road vehicles from June through October, snowmachine during the winter and spring months, helicopter and fixed wing plane or by boat from Norton Sound. Proposed access to the dredging location will be by creating a 2,150 to 4,500 ft long access channel that will be maintained and/or reestablished annually. Access to proposed camp facilities and the Bonanza Channel is a proposed 330 ft long access road, north of the Nome-Council Highway located on ADL 726989 (DKSN 35).

Acreege Disturbance and Reclamation Bonding

Annual mining/processing rate of up to 900,000 cubic yards of material per year to a maximum depth of 31 feet. The mining operation within the estuary will be restricted to an area of 15 acres or less at any one time. The project is proposing to conduct reclamation concurrent with mining, with temporary dredge material disposal sites reclaimed by the end of the project with exception to the access channel which will be left at 10ft below mean high water.

AUTHORITIES

Relevant Constitutional and Statutory Authorities

Alaska Const. art. VIII (Natural Resources)
AS 27.19 Reclamation
AS 38.05 Alaska Lands Act
AS 38.05.020 Authority and Duties of the Commissioner
AS 38.05.850 Permits
AS 38.05.255 Surface Use of Land or Water

Relevant Regulatory Authorities

11 AAC 55 Land Planning and Classification
11 AAC 86 Mining Rights
11 AAC 96 Miscellaneous Land Use
11 AAC 97 Mining Reclamation

Permitting Background/History of Applicant Compliance

IPOP LLC submitted the initial application for the use of the 36" Cutterhead dredge, with a 12" nozzle, to DNR in Spring of 2018 and noticed on March 16, 2018. A subsequent amendment proposing to reduce the activity to a 10" suction dredge was noticed on April 5, 2018. Another amendment proposing to conduct exploration drilling and test dredging with a 6' suction dredge was noticed July 26, 2018. The Division issued a Land Use Permit authorizing the exploration drilling and test dredging on April 2, 2019, a 14-day extension from June 1, 2019, through June 14, 2019, for test plume study, The Division issued a second extension for test plume study on August 15, 2019, through October 31, 2019. Amendment #1 proposing winter exploration core drilling was issued on October 3, 2019. IPOP has no formal compliance issues with the Alaska Department of Natural Resources.

Agency Notice & Online Public Notice and Requestion for Information

The Division provided the application for review and opportunity to comment on the activities considered for authorization under this summary. The following entities were notified on July 16, 2024 for comment on the application: The Alaska Department of Fish and Game (ADFG), Alaska Department of Environmental Conservation (ADEC), ADNOR Water Resources Section (ADNR-Water), ADNOR State Historic Preservation Office (AK SHPO), U.S. Army Corps of Engineers (USACE), Bureau of Land Management (BLM), and all interested parties that requested notification. Agencies were given the opportunity to review the application materials and submit comments for a 14-day period. ADFG and USFWS requested an extension for agency review. The Division extended the deadline for agency review through August 5, 2024.

The Division issued public notice of the application on July 16, 2024. The comment deadline was July 30, 2024, at 5:00pm AST. Notice was distributed using the State of Alaska Online Public Notice System. The public notice was also extended to July 30, 2024. Extended comment deadline was August 6, 2024. DNR received 51 public comments. All comments were in opposition to the proposed mining operation. Public comments have been reviewed and cataloged in the administrative record.

FINDINGS OF FACT

After careful consideration of the APMA application and supporting materials, the administrative record, public and agency comments, and other relevant references cited in footnotes, the Division makes the following findings of fact.

Proposed Bonanza Channel Project Size and Scope

Despite not having the largest physical footprint¹, this proposed placer mine is the largest contemporary placer operation in the State of Alaska when considering the volume of material being processed. It involves the largest throughput of dredged material in the state². The production rate of 267 cubic yards an hour of the IPOP cutterhead dredge would dwarf all of the offshore / marine fleet in history of Nome, save for the BIMA bucket-ladder dredge which operated in the Nome offshore gold lease tracts from 1987 to 1990. At the time, the BIMA was the world's largest offshore mining dredge, and it remains so to this day. The Bonanza Channel Project is novel, because it is not offshore. It is the first proposed cutterhead suction dredge, placer gold mining project in an estuarine or lagoon system anywhere in the State of Alaska.

Mining Operation is Located in Navigable Waters and is also located within the Northwest Area Plan for State Lands management unit WT-01 which is classified as Wildlife Habitat Land.

Except for the access road and proposed camp area, the remainder of the mining operation is located entirely below the mean high water mark in the Bonanza Channel, which is a State Navigable Water as defined by AS 38.05.965 (14), meaning "any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and

¹ Approximately 160 acres over 5 years.

² IPOP describes a mining and processing rate of up to 900,000 cubic yards of material per year. The US Army Corps of Engineers describes the project as implemented over a five-year period to involve dredging approximately 4.5 million cubic yards of material (estimated bulked volume of 4.9 million cubic yards).

takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes.” It is also a State Public Water as defined by AS 38.05.965 (21), meaning a navigable or "other water, whether inland or coastal, fresh, or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest." Therefore, Bonanza Channel is subject to management under AS 38.05.126.

In Addition, the project lies within the Northwest Area Plan for State Lands Management Unit WT-01, which the plan designates as Fish and Wildlife Habitat and Harvest as the primary use and is also by virtue of the classification order within the Plan classified as 11 AAC 55.230 Wildlife habitat land.

Land classified wildlife habitat is land which is primarily valuable for

- (1) fish and wildlife resource production, whether existing or through habitat manipulation, to supply sufficient numbers or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or
- (2) a unique or rare assemblage of a single or multiple species of regional, state, or national significance.

The Proposed Mining Operation Will at Times Obstruct Through Navigation within the Bonanza Channel.

After reviewing plan maps, diagrams, correspondence between IPOP and the Alaska Department of Fish and Game regarding silt curtain boom deployment, operational sequencing, bathymetric maps within the project area provided by IPOP and considering the locations of the Dredge Material Storage Areas, the Division has found that the proposed mining operation will obstruct through traffic at various stages. This is most evident in Year 1 during the initial access channel construction and locations of silt curtain deployments. It is also evident in Mining Years 4-5, in places where the channel is narrower. With silt curtains deployed through traffic would be forced to transit through a narrow route between the operation and the island located in mining claims DKSN 36 and 37. The narrow route consists of water depths no deeper than 2ft from the Mean High Water level³, and even shallower during low tide. This constriction of the channel, combined with the shallow water depths, would significantly impede or prevent public navigation of the Bonanza Channel during those years, infringing upon the public's navigation rights.

The Federal Environmental Assessment and Record of Decision to Issue CWA Section 404 Permit Determined the Project would cause detrimental effects in US Navigable Waters.

Upon review of the US Army Corps of Engineers (USACE) Environmental Assessment and Record of Decision, the Division notes the following determination⁴ from the USACE on IPOP's proposed work in the Bonanza Channel: "Detrimental effects are expected to be more than minimal and temporary. The dredging/mining of the Bonanza Channel would induce substantial impacts to SAV, the channel substrate, EFH, and other resources in the project area. However, these impacts are considered short-term in duration because of the dynamic nature of the estuary system at this location. Once the project has been completed, the impacted channel and associated resources are expected to return to their approximate baseline status."

³ APMA F20242875 2020 Narrative and Plan of Operations, Section 5.7 (Figure 5-16 Bathymetry Map), Page 53

⁴ 3/14/2024 USACE Memorandum for the Record (Environmental Assessment and Statement of Findings) Section 7.3, Page 94

After careful consideration, the Division has determined that the findings of the USACE referenced above adequately address and summarize the main detrimental effects of the proposed mining operation in a manner consistent with our own review and statutory responsibilities. After independently evaluating these findings, we conclude that they align with our analysis. Accordingly, we adopt the USACE finding⁵ above as reflective of our conclusions on this matter.

The Proposed Mining Operation is Not Supported by Exploration / Sufficient Evidence of Placer Gold Deposit.

The Division, at the request of multiple commenter's in the public comment period and also at its own behest, reviewed the exploration data and documentation submitted by IPOP, LLC, for the proposed Bonanza Channel Dredging Project. The objective is to evaluate the technical validity of the data supporting the claim of a commercially viable placer gold deposit. Our analysis considers industry-standard exploration practices, the characteristics of placer gold deposits, and the specific details of IPOP's exploration program.

IPOP's Claims and Exploration Approach

IPOP asserts the presence of "commercial significant quantities of placer gold" within the Bonanza Channel, anticipating a minimum of 10 years of socio-economic benefits to Nome based on their preliminary exploration drilling. However, IPOP acknowledges a lack of prior placer production in the Bonanza Channel and limited knowledge of gold distribution beyond core samples.

IPOP's exploration in 2019 involved drilling 13 test holes to a depth of 31 feet using a Geoprobe 2.5" direct push drill within three claims. Of those 13 test holes, 8 are within the proposed year 1-2 mining cuts, with one hole being nearby but not within the year 3 proposed mining cut. No drilling has been conducted within the year 4-5 proposed mining cuts. Sediment cores were removed in 4' plastic sleeves and transported to Nevada for fire assay, although not for gold. After assay work was completed, IPOP transported the lab reject material to California, where 100% of the lab reject material was combined and processed. IPOP states that this process yielded "a significant amount of gold present, estimated at 7 grams of gold from the 323 pounds of drill sample processed (representing an average calculated gold grade of 49 g/m³ from the drill holes)."

Technical Concerns Regarding Exploration Adequacy

Several critical technical concerns arise regarding the adequacy of the exploration program to definitively demonstrate a commercially viable placer gold deposit:

1. Sample Size and Representativeness:

- The volume of material processed (approximately 5 five-gallon buckets) is far too small to be representative of the broader project area. Placer deposits require relatively large sample sizes for accurate valuation due to the non-uniform distribution of gold.
- The combination of lab reject material prevents the determination of the spatial distribution of gold, hindering the ability to assess the consistency and extent of gold mineralization within the proposed mining cuts.

⁵ While we agree with and adopt the USACE finding as reflective of our conclusions, this finding is not intended to represent and exhaustive listing of all potential detrimental effects or impacts from IPOP's proposed mining operation. The Division has determined that a detailed discussion of the additional issues is unnecessary for the purposes of this determination.

2. Particle Sparsity Effect:

Placer gold deposits, particularly those containing fine gold, are susceptible to the particle sparsity effect. With fine gold, the particle sparsity effect is more pronounced. Small sample sizes can lead to disproportionate influence from individual gold particles, resulting in overestimation or underestimation of the true gold concentration. IPOP's estimated sample grade of 49 g/m³ maybe directly influenced by this effect.

3. Discrepancy with Established Placer Deposits and Credibility:

- The estimated gold grade of 49 g/m³ from IPOP sampling is exceptionally high and the credibility of that grade for an entire deposit would be anomalous to surrounding well defined deposits. Comparing the claimed grade to well-known placer deposits provides further perspective. The Nome offshore placer gold deposits, known for their fine-grained gold content, have much lower grades. The best single deposit identified in the Nome offshore area, Humpy, has a grade of approximately 1.327 g/m³, which is about 37 times lower than the claimed 49 g/m³. Even the richest part of upland surface relict gravels near Nome has an average grade of only about 0.92 g/m³. When considering the richest proven placer gold deposits worldwide, none come close to the claimed 49 g/m³ sample grade for fine detrital gold. The extraordinarily high grade claimed in this case study would, if verified, potentially make it one of the richest, if not the richest, placer gold ground on the planet. Such an exceptional claim requires extensive, systematic sampling and verification by independent experts to be considered credible. The particle sparsity effect, combined with the inadequate sampling program described, likely led to a significant overestimation of the gold grade.
- As a permitting and regulatory agency, it is critical for the Division to approach extraordinary claims, such as a placer sediment sample containing 49 grams of gold per cubic meter, with a high degree of caution.

4. Fine Gold Considerations:

- For fine gold (100 mesh or more), the sample size problem is even more pronounced. Fine gold, often called "flour gold," can have 23,145 pieces or more per gram. This high particle count means that a much larger volume of material needs to be processed to get an accurate representation.
- The described sampling approach does not account for variations in gold concentration across the entire area or depth of the deposit. Placer deposits can have significant variations in gold content both horizontally and vertically.

IPOP's initial exploration efforts, *at face value and IPOP's own conclusions*, provide preliminary evidence of gold within the Bonanza Channel. However, the current data is insufficient to definitively demonstrate the existence of a commercially viable placer gold deposit. The estimated gold grade of 49 g/m³ is exceptionally high and requires substantial verification. Addressing the concerns outlined above through a more comprehensive and rigorous exploration program is crucial to validating IPOP's claims and supporting the proposed mining operation. The Division should apply rigorous scrutiny to such claims, requiring detailed documentation of sampling methods, quality assurance/quality control (QA/QC) procedures, and independent verification of results before accepting them as credible evidence for permitting decisions. In this case, the reported grade should be treated with caution unless validated by robust exploration and analysis that meets industry standards for resource estimation.

Inadequacy of Reclamation Cost Estimate

While the Reclamation Cost Estimate (with a grand total of \$ 943,777.52) submitted to the Division appears comprehensive in its structure, containing information across all expected categories and line items, it falls short of accurately representing the true financial burden of the reclamation process on the State of Alaska should IPOP default and fail to follow through with required 11 AAC 96 permit obligations or 11AAC 97 reclamation. Upon thorough review, it is evident that the costs presented and the assumptions regarding timeframes do not align with the reasonable and probable expenses associated with conducting a proper and complete reclamation of the site. The estimate, though complete in form, significantly underestimates the actual resources required for effective reclamation of mine cuts and the access channel.

- Notably, At the maximum hole size of 171,668 cubic yards and middle of range yards per hour capacity assumption and considering barge/mobilization scheduling it is unlikely that the quoted rental reclamation dredge (Eddy 4" Dredge Sled) would be able to complete the reclamation within a single season operating window. The RCE , which assumes single season reclamation, paints a unrealistic picture that includes only the actual hours of dredging and pumping materials, but does not provide downtime for maintenance, severe weather delays, time allowance for the required repositioning of the reclamation dredge, allowing for the settling of suspended sediments in the water column, and the time needed to move any applicable silt curtains.
- The Eddy 4" Dredge Sled specified in the submitted Reclamation Cost Estimate is demonstrably undersized and ill-suited for the scale and complexity of the required reclamation earthwork. The proposed machinery lacks the necessary capacity, power, and specialized features⁶ to efficiently and effectively complete the extensive sediment relocation inherent in a project of this magnitude. This mismatch between the equipment proposed and the actual needs of the reclamation work is likely to result in significant time delays, increased labor costs, and other problems.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and upon consideration of the entire record, the Division hereby makes the following Conclusions of Law. These conclusions are made in accordance with applicable statutes, regulations, and legal precedents governing mineral development, state lands and navigable waters.

Necessary Surface Use

IPOP's proposed Bonanza Channel Placer Project is located on State Mining Claims in accordance with AS 38.05.195. Pursuant to the Alaska Constitution, art. VIII § 11 "Mineral Rights", *surface uses of land by a mineral claimant shall be limited to those necessary for the extraction and or basic processing of the mineral deposits, or for both.* The Alaska Legislature implements and expands upon this constitutional surface use limitation in AS 38.05.255(a), which states that *surface uses of land or water included within a mining property by the owners, lessees, or operators shall be limited to those necessary for the prospecting for, extraction of, or basic processing of minerals and shall be subject to reasonable concurrent uses.*

⁶ For example, the GPS, depth finding, and precision control capabilities of the production cutterhead dredge that IPOP proposes to do their own contemporaneous reclamation with.

The insufficient exploration as described in the findings of fact within the project area does not support IPOP's proposed mining operation and surface uses. Without adequate exploration data, the Division cannot rationally conclude that the proposed surface uses are necessary for mineral extraction and processing, as required by the Alaska Constitution, art. VIII § 11 and AS 38.05.255(a). These laws limit surface uses of mining claims to those necessary for prospecting, extraction, or basic processing of minerals. The lack of comprehensive exploration data prevents the Division from determining that the proposed surface disturbances are limited to those necessary for mineral development, as mandated by law.

Furthermore, IPOP's failure to follow a reasonable and customary mineral exploration, development, mining, and reclamation sequence undermines the necessity of the proposed surface uses. A proper sequence ensures that surface disturbances are justified by the presence of economically viable mineral resources and that appropriate reclamation measures are integrated into the project plan. Without following this established sequence, there is no rational basis to conclude that the proposed surface uses are necessary for mineral extraction. Consequently, approving such uses without sufficient exploration data and a comprehensive project sequence would violate the principles set forth in the Alaska Constitution and state statutes, which aim to balance mineral development with the protection of surface resources and ensure responsible land management.

In applying these legal standards, the Division takes a comprehensive view of the project's exploration and development approach. The findings of facts reveal critical deficiencies in IPOP's exploration efforts. Specifically, only 8 of the 13 drill holes were located within the proposed Year 1-2 mine cuts, none where in the Years 3-5 cuts. Concurrently, the exploration methodology employed deliberately removes basic geologic exploration findings such as location of resource, lateral and horizontal distribution of the resource and makes it impossible to determine the precise origin of the minimal gold discovered. These facts subsequently provide a lack of information to justify the proposed surface uses and are not supported due to the inadequate mineral exploration of the project area. The overall inadequacy of the exploration program, as evidenced by the limited and inconclusive nature of the data presented, is sufficient to determine that the proposed surface uses do not meet the legal standard of necessity required by the Alaska Constitution and state statutes. This application of the legal standards aligns with the state's responsibility to ensure that mining activities on state public lands are based on sound exploration practices and demonstrable mineral potential.

Public Trust Doctrine (Impairment and Navigation)

The public trust doctrine in Alaska is rooted in the State's Constitution⁷, AS 38.05.126⁸, and common law. It holds that the state, as trustee, must manage navigable waters and the lands beneath them for the benefit of all Alaskans. This doctrine extends beyond just navigable waters to include all public waters, which are defined as those "reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest." The Alaska Supreme Court has interpreted the public trust doctrine broadly, recognizing that it encompasses not only traditional uses such as navigation, commerce, and fishing, but also recreational uses and environmental

⁷ Alaska Const. art. VIII § 3 "Common Use" and art. VIII § 14 "Access to Navigable Waters".

⁸ **AS 38.05.126. Navigable and Public Water.**

(a) The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.

(b) The state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state.

(c) Ownership of land bordering navigable or public water does not grant an exclusive right to the use of the water and a right of title to the land below the ordinary high water mark is subject to the rights of the people of the state to use and have access to the water for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land.

protection. The court has explained that the common use clause in the Alaska Constitution was intended to incorporate trust principles guaranteeing access to the state's fish, wildlife, and water resources. By obstructing or significantly impeding navigation within the Bonanza Channel, the proposed project would directly jeopardize the state's ability to manage state navigable waters and submerged lands as trustee on behalf of the public.

In the case of *Hayes v. AJ Associates, Inc.*, 846 P.2d 131 (Alaska 1993), the Alaska Supreme Court addressed the relationship between mining activities and the public trust doctrine. The court rejected the contention that mining is a public trust purpose, stating, "Although we recognize that the filling of tidelands alone may not ease all public trust restrictions, we reject Hayes' contention that mining is a public trust purpose". This ruling clearly establishes that mining claims and mining activities are not considered public trust uses in Alaska, and therefore do not automatically override public trust protections or grant unrestricted access to public trust resources.

IPOP's proposed Bonanza Channel Placer Project is located on AS 38.05.195 Mining Claims within State of Alaska navigable waters subject to the Public Trust doctrine. While IPOP holds mining claims, their interests do not supersede public trust purposes or automatically grant the ability to obstruct navigable waters or impair public uses. As established by the Alaska Supreme Court, mining claims and mining activities in navigable waters are not considered public trust purposes.

CWC Fisheries, Inc. v. Bunker, 755 P.2d 1115 (Alaska 1988) provides a relevant example of how private interests in navigable waters are subject to the public trust doctrine in Alaska.

In this case, the court held that even though CWC Fisheries had received a state land patent for tidelands, that patent did not extinguish public rights protected by the public trust doctrine. The court ruled that the state cannot convey tidelands free of the public trust, and that any conveyance of tidelands remains subject to the public's right to use of navigable waters for purposes of navigation, commerce and fisheries.

Given this legal framework, IPOP's proposed surface uses and mining operations must be evaluated through the lens of allowing non-public trust activities within navigable waters. The findings of facts have established that the proposal would have detrimental effects and significant impacts on the substrate, submerged aquatic vegetation, and other resources in the project area. Permitting such impairment, even if of limited duration, requires a public interest determination and careful consideration consistent with the State's duties as trustee.

The Division also agrees with the USACE's assessment, which has determined that more than minimal and temporary effects are to be expected in navigable waters. However, the insufficient exploratory work and highly speculative nature of IPOP's proposal have resulted in a dearth of data. This lack of comprehensive information makes it impossible for the Division to rationally conclude that the proposed use aligns with Alaska's constitutional and statutory provisions regarding navigable waters and submerged lands.

The Division's duty to protect the public trust requires it to exercise caution when considering proposals that may impact navigable waters and public trust resources. Given the lack of sufficient data and the speculative nature of the proposal, approving IPOP's project would be inconsistent with the Division's public trust responsibilities and would violate the legal principles set forth in the Alaska Constitution and Alaska state statutes, which aim to balance mineral development with the protection of surface resources and ensure responsible land management.

In summary, the proposed project's potential to obstruct navigation, combined with the USACE's findings of more than minimal and temporary detrimental effects on aquatic resources, leads the Division to conclude that approving the mineral extraction proposal as described would be inconsistent with the State's duty under the Public Trust Doctrine.

AS 38.05.850 Permitting Decision Requirements

The applicant has applied for a permit under AS 38.05.850, which authorizes the director to issue permits, rights-of-way, or easements on state land for various purposes, including those related to mineral extraction. AS 38.05.850(a) specifically requires that "In the granting, suspension, or revocation of a permit or easement of land, the director shall give preference to that use of the land that will be of greatest economic benefit to the state and the development of its resources."

Due to the lack of exploration data to justify the proposed mining operation, the Division cannot rationally determine that the proposed activity will provide economic benefits to the state while resulting in actual resource development as required by the statute.

In implementing this statute for permits to mine on state mining claims, the Division has the authority to request evidentiary proof of mining activity and resource data under 11 AAC 86.145, 11 AAC 86.200 and 11 AAC 96.030, including data associated with discovery. However, as a routine practice, the Division does not typically request or demand specific economic data, as the benefits are usually self-evident and without clear contention, allowing proposed projects to pass the basic test set forth in the statute.

In this case, the lack of sufficient exploration data has created an unusual situation where the economic benefits are not apparent, preventing the Division from determining that the proposal meets the basic economic benefit test required by AS 38.05.850.

Northwest Area Plan for State Lands

The Northwest Area Plan for State Lands (2008), adopted pursuant to AS 38.04.065 and 11 AAC 55 regulations, serves as the policy for the Department of Natural Resources in managing state lands within the Plan's scope. As outlined in 11 AAC 55.030, such plans must include "management guidelines and stated management intent, representing department policies to guide the actions of the department when making land use decisions, directing land management and ensuring compatibility among competing land uses".

Regarding Fish and Wildlife Habitat and Harvest Areas, the Plan states that "All land use activities will be conducted with appropriate planning and implementation to avoid or minimize adverse effects on fish, wildlife, or their habitats." Authorizing a large-scale placer mining operation without adequate exploration data would be inconsistent with this objective. Effective avoidance and minimization of adverse effects require targeted actions that focus on areas with significant economic resources, thereby avoiding unnecessary disturbance in less productive areas. Without such data, it is impossible to ensure that the proposed mining operation meets these standards.

In conclusion, the Division cannot approve IPOP's proposed mining operation without violating the policies established in the Northwest Area Plan for the management of state lands in this area.

⁹ Associated with a proposed operation that would be the largest contemporary placer mine in the state by materials moved and throughput.

AS 27.19.020 Reclamation Standard

Developing and operating a mining project of the type IPOP proposes without first conducting prudent exploration fundamentally conflicts with the statutory requirement under AS 27.19.020 to prevent unnecessary and undue degradation of land and water resources.

AS 27.19.100 defines "unnecessary and undue degradation" as surface disturbance exceeding what would normally result from operations conducted by a prudent operator using usual, customary, and proficient methods, considering site-specific conditions. A prudent operator would typically conduct thorough exploration to confirm the presence, location, and characteristics of economically viable mineral resources before initiating mining operations. This exploration work minimizes future surface disturbance by ensuring that subsequent development and mining activities are targeted and efficient, avoiding unnecessary disruption to areas without mine-able resources.

Reclamation Cost Estimate

As discussed in the findings of facts, the 1/13/2025 Reclamation Cost Estimate (RCE) submitted to the Division, with a grand total of \$943,777.52, appears comprehensive in its structure—containing information across all expected categories and line items—it falls short of accurately representing the true financial burden of the reclamation process on the State of Alaska should IPOP default and fail to follow through with required permit obligations or reclamation. The deficiencies in IPOP's RCE raise significant concerns about its ability to adequately account for the actual costs that would be incurred by the State.

Despite its shortcomings, the insufficient estimate amount of \$943,777.52 presented by IPOP as the cost to reclaim the maximum disturbance at any one time (which is based upon contemporaneous reclamation presumed to be completed as the IPOP dredge proceeds through its progressive yearly mining) provides insight into the significant scope and size of the proposed project. This estimate underscores both the complexity and magnitude of IPOP's operations.

Pursuant to 11 AAC 96.060, the Division must consider an applicant's history of compliance and the potential risk to the State in order to waive a requirement for an applicant for a Land Use Permit to provide security (bond). In this case, given the novel nature of IPOP's proposal, the highly specific reclamation requirements mandated by the U.S. Army Corps of Engineers (USACE) under its Clean Water Act Section 404 Permit, and the fact that this proposed mine constitutes the only placer mining operation in an estuarine or lagoon environment in Alaska, the Division determined that an RCE was necessary. Requiring an RCE for this application is supported by 11 AAC 96.030(a)(3). This requirement ensures that potential risks are adequately assessed and, if necessary, that an appropriate security amount is established based on both the scope and nature of IPOP's planned activities as well as the potential cost of reclamation for the permitted site.

IPOP, via counsel, has indicated that its 1/13/2025 submission of a revised RCE is its final revision, ending the discussion on further needed revisions. It is important to note that the Division is not obligated to calculate or correct a Reclamation Cost Estimate on behalf of an applicant; this responsibility lies solely with IPOP. The administrative record demonstrates that the Division was meticulous in providing months of technical assistance and guidance to IPOP in an effort to help it meet regulatory requirements. Despite these efforts, IPOP's RCE remains deficient as state above.

Given IPOP's deficient RCE and recognizing that the Division has no obligation to calculate or correct this estimate on IPOP's behalf, the Division has determined that there is insufficient information to make the determinations required under 11 AAC 96.060.

DECISION (LAND USE PERMIT AS 38.05.850)

For the reasons detailed in the preceding Findings of Fact and Conclusion of Law, **the Division hereby denies IPOP's application for a Land Use Permit for the Bonanza Channel Placer Project.** The decision is based on multiple independent grounds, each of which is sufficient to warrant denial. The conclusions are incorporated into the decision are summarized below to reflect the reasons for denial:

Necessary Surface Use: The insufficient exploration described in the findings of fact within the project area does not support IPOP's proposed mining operation and surface uses. Without adequate exploration data, the Division cannot rationally determine that the proposed surface uses are necessary for mineral extraction and processing or cause unnecessary and undue degradation to land and water resources.

Failure to Follow a Reasonable and Customary Mineral Exploration, Development, Mining, and Reclamation Sequence: The limited exploration efforts, with critical deficiencies such as inadequate sample sizes and questionable methodology, underscore the failure to follow a reasonable and customary sequence. Approving such uses without sufficient exploration data and a proper project sequence would violate the legal principles which aim to balance mineral development with the protection of surface resources and ensure responsible land management.

Public Trust Doctrine (Impairment and Navigation): The proposed mining operation will at times obstruct through navigation within the Bonanza Channel. After review of plan maps, diagrams, correspondence between IPOP and the Alaska Department of Fish and Game regarding silt curtain boom deployment, operational sequencing, bathymetric maps within the project area provided by IPOP and considering the locations of the Dredge Material Storage Areas; the Division has found that the proposed mining operation will unreasonably obstruct through traffic at various stages, most notably during the initial access channel construction and in Mining Years 4-5.

The Division's duty to protect the public trust requires it to exercise caution when considering proposals that may impact navigable waters and public trust resources. Given the lack of sufficient data and the speculative nature of the proposal, approving IPOP's project would be inconsistent with the Division's responsibilities and could potentially violate the legal principles set forth in the Alaska Constitution and state statutes, which aim to balance mineral development with the protection of surface resources and ensure responsible land management.

Inadequacy of Reclamation Cost Estimate: The Reclamation Cost Estimate (RCE) submitted to the Division falls short of accurately representing the true financial burden of the reclamation process on the State of Alaska should IPOP default and fail to follow through with required reclamation. The estimate incorporates the use of the undersized and underpowered Eddy 4" Dredge Sled, and significantly underestimates the actual resources required for effective reclamation of mine cuts and access channel.

In light of these deficiencies, the Division concludes that approving IPOP's application for a Land Use Permit would be contrary to responsible land management, the public interest and cited legal principles. **The application is therefore denied¹⁰.**

DECISION (RECLAMATION PLAN APPROVAL PURSUANT TO AS 27.19.030)

As discussed in the proceeding Finding of Facts and conclusions of law, the proposed operation if approved will cause unnecessary and undue degradation of land and water resources which is contrary to the performance standard of AS 27.19.020. Additionally, as the AS 38.05.850 Land Use Permit for the requested activity has been denied the Division cannot approve IPOP's Reclamation Plan without an AS 38.05.850 Land Use Permit on state land. IPOP's right to mine its state mining claims as proposed is contingent upon receiving a Land Use Permit. **Thus, IPOP's application for a Reclamation Plan Approval is denied¹¹.**

FULL DENIAL VS PARTIAL DENIAL/CONDITIONAL APPROVALS

The Division, in exercising its land management regulatory authority, often faces the decision of whether to approve a proposed activity outright, deny it entirely, or pursue an intermediate path of approval with conditions. While full denial represents the most restrictive outcome for the applicant, the Division recognizes the potential for responsible development and may explore the possibility of mitigating concerns through the imposition of specific conditions.

The appropriateness of conditional approval depends on the nature and severity of the identified issues and the agency's ability to effectively manage those issues through enforceable permit terms. This decision-making process necessitates a careful balancing of competing interests, aiming to both protect as needed and allow for reasonable utilization of resources. However, in instances where the identified deficiencies are so fundamental that they cannot be adequately addressed through conditions, as was done in this decision, a full denial becomes necessary. With APMA F20242875, for the reasons described above a full denial of the requested Land Use Permit and Reclamation Plan Approval was necessary.

¹⁰ The presence of the dispositive issues discussed in this decision renders further analysis of the merits unnecessary. Consequently, the requested Land Use Permit and Reclamation Plan Approval are denied based solely on these determinative factors.

¹¹ The presence of the dispositive issues discussed in this decision renders further analysis of the merits unnecessary. Consequently, the requested Land Use Permit and Reclamation Plan Approval are denied based solely on these determinative factors.

2024-2028 EXPLORATORY WORK PLAN NOT SUFFICIENTLY DEVELOPED

Within the totality of information provided within IPOP's Application for Permits to Mine in Alaska, essentially no details on their conceptual exploratory drilling program are discernable outside of articulated intent to do such work and a map of "planned delineation drill hole locations". While not an exhaustive listing, notably absent are the equipment to be used, depths, or such narratives and details that IPOP is undoubtedly familiar with from successfully obtaining prior exploration Land Use Permit and Amended Permits from the Division. IPOP states that they expect the "drilling plans, techniques, and processing/analysis of the core samples to evolve over time as more is learned about the distribution and size fractions of the gold." Yet no such drilling plans or techniques have been made specific in their application. The Division recognizes that additional exploration is needed and encourages IPOP to submit subsequent stand-alone application to pursue the information needed to cure the defects in their proposal denied in this decision.

APPEAL

APPEAL: An eligible person affected by this decision may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department. Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

Respectfully,



Steve Buckley
Mining Section Chief