

**Public Comment on IPOP, LLC's Multi-Agency Application for Permits
to Mine in Alaska IPOP, LLC (Case File No. F20242875)**

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**RE: Public Comment on IPOP, LLC's Multi-Agency Application for Permits to
Mine in Alaska IPOP, LLC (Case File No. F20242875)**

Ms. Bringhurst,

Kawerak, Inc. (Kawerak) submits these comments in response to the Alaska Department of Natural Resources' (DNR) Notice to the Public and Request for Information related to the activities set forth in the Alaska Multi-Agency Application for Permits to Mine in Alaska (APMA) for Suction Dredge & Reclamation in the Nome Mining District, near the community of Solomon, in Case No. F20242875 (Application). The Application sets forth IPOP, LLC's (IPOP) proposal to operate a cutter head suction dredge on state mining claims in the Bonanza Channel located within Safety Sound near the Village of Solomon. Yet the content of IPOP's Application already violates Federal and State subsistence requirements, and altogether fails to establish how the Project will serve the public interest. On these and other grounds, Kawerak strenuously opposes the Application, and asks that DNR deny the same.

In a related proceeding, the U.S. Army Corps of Engineers (USACE, or Corps) arbitrarily reversed its earlier denial of IPOP's application to dredge under Section 404 of the Clean Water Act (CWA), and offered individual permit #P0A-2018-00123 (Corps Permit) to IPOP to dredge and dispose of material in U.S. waters approximately 25 miles east of Nome, Alaska, in the Bonanza Channel. The Corps Permit—which was issued without renewed public notice or comment—is included as an Attachment to IPOP's Application.

In the **six** years that have passed since IPOP submitted its initial application materials to relevant Federal and State authorities, Kawerak has developed a consistent record of opposition to the Project on both State and Federal stages. Our comments on the Application specifically concern the adverse effects to subsistence activities and to the public interest that would occur as a result of the activities described in the Application (which incorporates the Corps Permit by

reference), and which run afoul of State and Federal law. We are especially alarmed by the “unavoidable adverse effects” occasioned by IPOP’s proposed activity, which adverse effects are acknowledged by IPOP and the Corps.

In sum, the Application disregards demonstrated negative impacts and cumulative damage to Tribal cultural and subsistence resources, the environment, wetlands, historic properties, fish and wildlife, water supply and quality, and welfare of the people. Both the Corps Permit and the Application rely on the unsupported assertions of IPOP, which do not overcome—and often do not even address—substantive issues of Federal or State law, or acknowledged adverse impacts to the area. Indeed, Federal and State laws prohibit the issuance of a permit that would de-prioritize the subsistence needs of rural Alaskans and result in yet-undetermined adverse impacts to water quality and wildlife.

Kawerak adopts in full and incorporates by reference its April 9, 2018 comments on IPOP’s APMA permit application; its May 24, 2021 Comments to USACE regarding IPOP’s Corps Permit application, its Joint Correspondence of April 12, 2024 alongside the Village of Solomon, Solomon Native Corporation, Bering Straits Native Corporation, Sitnasuak Native Corporation, and Norton Sound Economic Development Corporation; and its Public Comment and Request for Public Hearing submitted in response to Draft Alaska Pollutant Discharge Elimination System (APDES) Permit No. AK0062295 issued by the Department of Environmental Conservation.¹

I. The Project Violates State and Federal Law with Respect to Subsistence Priority.

The Bonanza Channel and its surrounding environs serve as a subsistence use area throughout the year. The Corps has acknowledged the same.² In addition to fishing and foraging, subsistence users hunt mammals and birds, gather eggs and greens, gather salt for processing meats, and herd reindeer, often as a means of food security and to insulate community members from the grocery markups in the fly-in City of Nome. Moreover, Kawerak has explained, subsistence is part of the cultural identity of local Native communities. In previous comments, Kawerak and other affected parties have raised concerns that the presence, noise, and visual disturbance of IPOP’s Project would negatively impact subsistence resources—specifically including saffron cod or tomcod, eiders, swans and other birds—and therefore these year-round local subsistence users.

¹ Kawerak’s Comment and Request for Public Hearing on the Draft APDES Permit is due after the July 30, 2024 deadline for Public Comment on the APMA Application at issue.

² USACE 404 Permit Pacific Ocean Division Decision Document (Decision Document), at 12 (“Government-to-government consultations with the Village of Solomon, a federally recognized Tribe traditionally associated with the project vicinity, confirmed the longterm subsistence activities conducted by the Tribe and others in this general area.”).

Rather than address these concerns, IPOP has simply taken the position that no subsistence permits have been issued for the Project area. With respect to local concerns regarding the effect of Project on fish migration, seal presence, and other subsistence resources of the area, IPOP simply declined to respond.³ When commenters explained that IPOP's proposed operations would limit the use of subsistence vessels to navigate the channel, IPOP argued that "there would be other places in the vicinity from which to view wildlife and engage in recreational activities."⁴ But **yielding to subsistence priority is not discretionary. Rather, entitlement to subsistence priority is enshrined in both State and Federal law.**

Federal law requires that rural residents of Alaska be given a priority for subsistence uses of fish and wildlife.⁵ At the State level, AS 16.05.258 mandates that subsistence use is prioritized above all else. AS 16.05.790 protects against hunter harassment. The Corps deferred any such analysis to the State, noting that "[a]s both are state laws, their implementation and enforcement are outside of the Corps' purview . . ."⁶ With respect to its own subsistence analysis, the Corps simply concluded that

[t]he mining operation would **likely prevent subsistence-related activities in the area being actively mined and the immediately surrounding areas**, but this involves a relatively small area compared to the 25-mile regional estuary system and the terrestrial areas to the north of estuary. **Although the general project vicinity supports various subsistence activities**, no unique subsistence opportunities are known to exist at Bonanza Channel that would be adversely affected.⁷

The Corps further acknowledged that "[p]otential adverse impacts related to subsistence activities, aesthetics, noise, and increased activity levels in the project area" had been identified.⁸

For purposes of DNR's analysis, the Corps' findings—which expressly acknowledge the Project's likely adverse impacts to subsistence use in the area—are insufficient to overcome Alaska's statutory requirements. Specifically, AS 16.05.258 establishes that a **reasonable opportunity for subsistence uses** must be provided first, before any other uses of any harvestable surplus of a fish and game population. A "reasonable opportunity" under the statute means an opportunity, as determined by the appropriate board, "that allows a subsistence user to participate

³ *Id.* at 47; 48.

⁴ *Id.* at 46.

⁵ 16 U.S.C. §3101, *et seq.*

⁶ Decision Document at 54.

⁷ *Id.* at 92 (Emphasis added).

⁸ *Id.* at 120.

in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.”⁹ IPOPOP’s Application denies subsistence users this “reasonable opportunity,” as IPOPOP has declined altogether to address the community members’ concerns related to the Project’s effects on fish migration, seal presence, and other subsistence resources of the area. Moreover, IPOPOP’s response to concerns regarding access for subsistence activities has been to point to the existence of **other** subsistence areas (rather than accommodating the requisite reasonable subsistence use of the area at issue).

Nor does IPOPOP’s Application adequately address the prohibition on harassing activities towards those conducting lawful hunting, fishing, trapping or viewing of fish and game under AS 16.05.790. That statute prohibits the intentional obstruction or hindrance of another person’s lawful hunting, fishing, trapping or viewing of fish and game. Illegal activities include positioning one’s self in a location where human presence may alter the behavior of fish or game another person is pursuing.¹⁰ It is also illegal to create a sight, sound, smell, or physical stimulus to alter the behavior of fish and game another person is attempting to take.¹¹ Yet IPOPOP’s Application proposes to do just that, without regard for the consequences.

And though the DNR must ensure that Alaskan land is used in a manner that “will be of greatest economic benefit to the state and the development of its resources,”¹² IPOPOP provides no evidence to substantiate its speculative claims that the Project will “provide a substantial multi-million dollar economic benefit to the community of Nome and Alaska.”¹³ Nor does IPOPOP acknowledge the adverse economic impact its operations will have upon the well-established, pre-existent birding tourism industry, much less the negative effects the Project will have on the area resources that support important subsistence and cultural activities. To ensure the greatest economic and developmental benefit to the State, then, DNR must deny IPOPOP’s application.

II. The Project is Not Consistent with the Public Interest.

In considering IPOPOP’s proposed Plan of Operation, DNR must abide by its statutory mandate to “provide for maximum use of state land consistent with the public interest.”¹⁴ In a state like Alaska, the public interest includes conservation of fish, wildlife, and habitat; protection of commercial, sport and subsistence fishing, and hunting; and other public uses. But to Kawerak’s knowledge—and with the limited documentation and data available—IPOPOP’s Application is totally at odds with the public interest.

⁹ AS 16.05.258(f).

¹⁰ AS 16.05.790(a)(1).

¹¹ AS 16.05.790(a)(2).

¹² AS § 38.05.850(a).

¹³ Application Attachment C, 2020 Narrative and Plan of Operations for the Bonanza Channel Placer Project, Nome Alaska, at 7.

¹⁴ AS § 38.04.005(a).

As just one example, the Southern Seward Peninsula is in the midst of a salmon crisis that has lasted nearly five years. The majority of salmon that enter the Bonanza Channel and Safety Sound Estuary come through the eastern most outlet just past the Bonanza Bridge. If IPOP is allowed to dredge and mine these waters, their operations will certainly impact salmon migration and propagation, further exacerbating salmon declines. The Bonanza Channel and Safety Sound are listed in the Anadromous Body of Water Catalog and chum salmon are noted by the Alaska Department of Fish and Game to have spawning grounds in close proximity to the proposed dredging and mining operation. Further, Safety Sound has been documented as an important rearing and growth habitat for juvenile chum salmon as they migrate to the ocean.

Similarly—and as the Application acknowledges—the proposed activities will almost certainly affect the Ringed Seals in the area that are already be under threat. It is essential to Ringed Seal pups and sub-adults to hone their fishing skills on small forage fish and to weather out adverse weather conditions or large storms on the open ocean. Stellers and Spectacled Eiders are also on the Endangered Species Act list as Threatened, and known to frequent the area. IPOP has offered no satisfactory plan for how to accommodate these species, whose survival contributes to the State's public interest.

And in response to concerns regarding DNR's own designation of the project area as habitat ("including special aquatic sites, due to extensive unknowns and the risk of failure of restoration in this subarctic climate"), and related federal agency recommendations that IPOP prepare an Environmental Impact Study "due to the significant loss of the physical, chemical, and biological functions of the special aquatic sites and the unknowns on restoration of these functions," IPOP simply declined to respond.¹⁵

Kawerak therefore joins its community and neighbors in expressing its opposition to the as-of-yet undetermined levels of disturbance to the area occasioned by IPOP's proposed activities. Kawerak notes with particular concern IPOP's lack of data regarding the potential for introduction of metals including arsenic, mercury, copper and lead into the Project area. Nor has IPOP furnished any reassurance on this front; to the contrary, IPOP has conceded that its activities will negatively impact the water quality, wildlife, and recreational activities in the area (but assures the authorities these effects will be "temporary" and "minor").¹⁶ But DNR cannot as a matter of law simply take IPOP's unsupported water quality assurances at face value. Nor can DNR rely on the Corps' determination that IPOP's Project will pass muster, because the Corps Permit in turn relies on the State's determination.¹⁷

¹⁵ Decision Document at 36.

¹⁶ *Id.* at 72.

¹⁷ *Id.* ("In addition, the Applicant would implement water quality conditions included in the Clean Water Act Section 401 water quality certification issued by the state of Alaska, including obtaining permits under Section 402 of the Clean Water Act that govern discharges by this project.").

It is impermissible for DNR to issue a Permit that is inconsistent with the public interest. Yet IPOP has provided no evidence that its dredging activities will improve the area economy, support ongoing hunting and subsistence activities, or maintain current levels of fish and wildlife. DNR therefore lacks the data and the evidentiary support to conclude that the Application will not undermine—much less support—the public interest, and must deny the Application.

III. Conclusion

As established by the public record for this Project, the Corps' decision to issue IPOP's Corps Permit failed to take into account the vociferous opposition of local testimony and comments, was contrary to actions requested during Tribal Consultation, and ignored the recommendations of the U.S. Fish and Wildlife Service and NOAA. We ask that DNR not repeat the mistakes of the Federal government, and instead take into account the devastating impact that IPOP's Project will have on Native and rural Alaskan communities.

Thank you for the opportunity to provide comments on Kawerak's concerns with the Project. We are very troubled with how the Project would seriously and adversely impact community subsistence, water quality, migratory birds and aquatic species, and other properties of traditional, religious, and cultural importance to Kawerak. These comments and our previous comments on the scope of the Project describe the many reasons why Kawerak opposes this Project and the many considerations that DNR must evaluate in reviewing IPOP's Application. After completing a thorough review of all the environmental and cultural impacts and costs that would result from this Project, we strongly urge DNR to deny the Application.

If you have any questions regarding these comments, you may call Kawerak at (907) 443-5231.

Sincerely,

KAWERAK, INC.



Melanie Bahnke, President