

LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

HB 332 cont. 506

97

Original sponsor(s): REP. HOFFMAN, Davidson, Wallis, Jacko

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 332 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Goodnews Bay Critical Habi-  
7 tat Area and the Goodnews Bay management plan, and  
8 providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 16.20 is amended by adding a new section to read:

11 Sec. 16.20.630. GOODNEWS BAY CRITICAL HABITAT AREA ESTABLISHED.

12 (a) The following described areas are established as the Goodnews Bay  
13 Critical Habitat Area: the state tideland below the mean high tide  
14 line, submerged land, and water of the state along Kuskokwim Bay from  
15 the northwesterly point of Section 33, Township 12 South, Range 75  
16 West, Seward Meridian along Kuskokwim Bay to the southeasterly point  
17 of Section 32, Township 13 South, Range 75 West, Seward Meridian, and  
18 within Goodnews Bay within

19 Township 12 South, Range 73 West, Seward Meridian

20 Sections 17 - 36

21 Township 12 South, Range 74 West, Seward Meridian

22 Sections 19 - 20

23 Sections 23 - 36

24 Township 12 South, Range 75 West, Seward Meridian

25 Sections 24 - 26

26 Sections 33 - 36

27 Township 13 South, Range 74 West, Seward Meridian

28 Sections 1 - 10

29 Sections 16 - 19

1 Township 13 South, Range 75 West, Seward Meridian

2 Sections 1 - 24

3 Sections 26 - 32

4 Township 13 South, Range 76 West, Seward Meridian

5 Sections 1 - 3

6 Sections 9 - 16

7 Sections 21 - 27

8 Sections 34 - 36.

9 (b) The Goodnews Bay Critical Habitat Area is established to  
10 protect and maintain fish and wildlife habitat, populations, and  
11 aquatic plant resources, especially eelgrass beds, and to ensure the  
12 continued productivity of the area's fisheries and fish and wildlife  
13 harvest.

14 (c) The Goodnews Bay Critical Habitat Area is closed to mineral  
15 entry and mineral leasing under AS 38.05.185 - 38.05.275.

16 (d) The commissioner shall permit the construction, maintenance,  
17 and the reasonable use of docking facilities within the Goodnews Bay  
18 Critical Habitat Area.

19 \* Sec. 2. AS 41.23 is amended by adding a new section to read:

20 ARTICLE 3. GOOD NEWS BAY MANAGEMENT PLAN.

21 Sec. 41.23.700. GOODNEWS BAY MANAGEMENT PLAN. (a) The commis-  
22 sioner shall establish and may revise the Goodnews Bay management plan  
23 to protect fish migration and spawning in the area near shore within  
24 the area described in (c) of this section. The management plan shall  
25 be prepared with the concurrence of the commissioner of fish and game.

26 (b) The commissioner shall permit mining under AS 38.05.185 -  
27 38.05.275 within the area described in (c) of this section under terms  
28 established in the management plan that prevent the material inter-  
29 ference from mining with fish migration and spawning within the area

1 described in (c) of this section.

2 (c) The Goodnews Bay management plan shall cover the state  
3 tideland below the mean high tide line, the submerged land, and water  
4 of the state to a line one-half mile offshore from the mean high tide  
5 line within

6 Township 14 South, Range 75 West, Seward Meridian

7 Sections 4 - 5

8 Section 9

9 Section 16

10 Section 21

11 Section 28

12 Section 33

13 Township 15 South, Range 75 West, Seward Meridian

14 Section 4

15 Section 9

16 Sections 15 - 16

17 Sections 21 - 22.

18 (d) The commissioner may adopt regulations to implement this  
19 section.

20 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER HB 332	SPONSOR Representative Hoffman
SHORT TITLE OF BILL Goodnews Bay Critical Habitat Area			
DEPARTMENT POSITION Support			
PREPARED BY <i>Frank Rue</i> Frank Rue, Director	DATE 5/8/89	COMMISSIONER'S SIGNATURE <i>William Dalton</i>	DATE 5/9/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL Goodnews Bay Residents, Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL None Known

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of establishing Goodnews Bay Critical Habitat Area is to protect and maintain fish and wildlife habitat and populations and aquatic plant resources, especially eelgrass beds, and to ensure the continued productivity of the area's fisheries and fish and wildlife harvest.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill establishes Goodnews Bay Critical Habitat Area and provides for management of the area under the State Critical Habitat Area Program. It establishes the purpose for which the area is to be managed and closes the area to mineral entry and mineral leasing.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STEVE COWPER, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF MINING**

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ANCHORAGE, ALASKA 99510-7016  
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400 WILLOUGHBY #400  
JUNEAU, ALASKA 99801-1000  
PHONE: (907) 465-3400

February 1, 1990

Mr. Tony Smith  
Davis Wright & Tremaine  
550 W. 7th Avenue, Suite 1450  
Anchorage, AK 99501

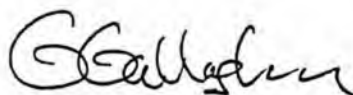
Dear Tony,

As requested, enclosed are various articles on the platinum resources of Alaska and the U.S. The literature is extensive and dates back to 1937 when the Territorial Department of Mines sampled and drilled beaches in the Goodnews Bay area.

I have spoken with the Anchorage office of the U.S. Bureau of Mines and they are prepared, if requested, to present an overview of the platinum resources in Alaska.

Please call me at 762-2165 if you have any questions about this material.

Sincerely,

  
Gerald Gallagher  
Director

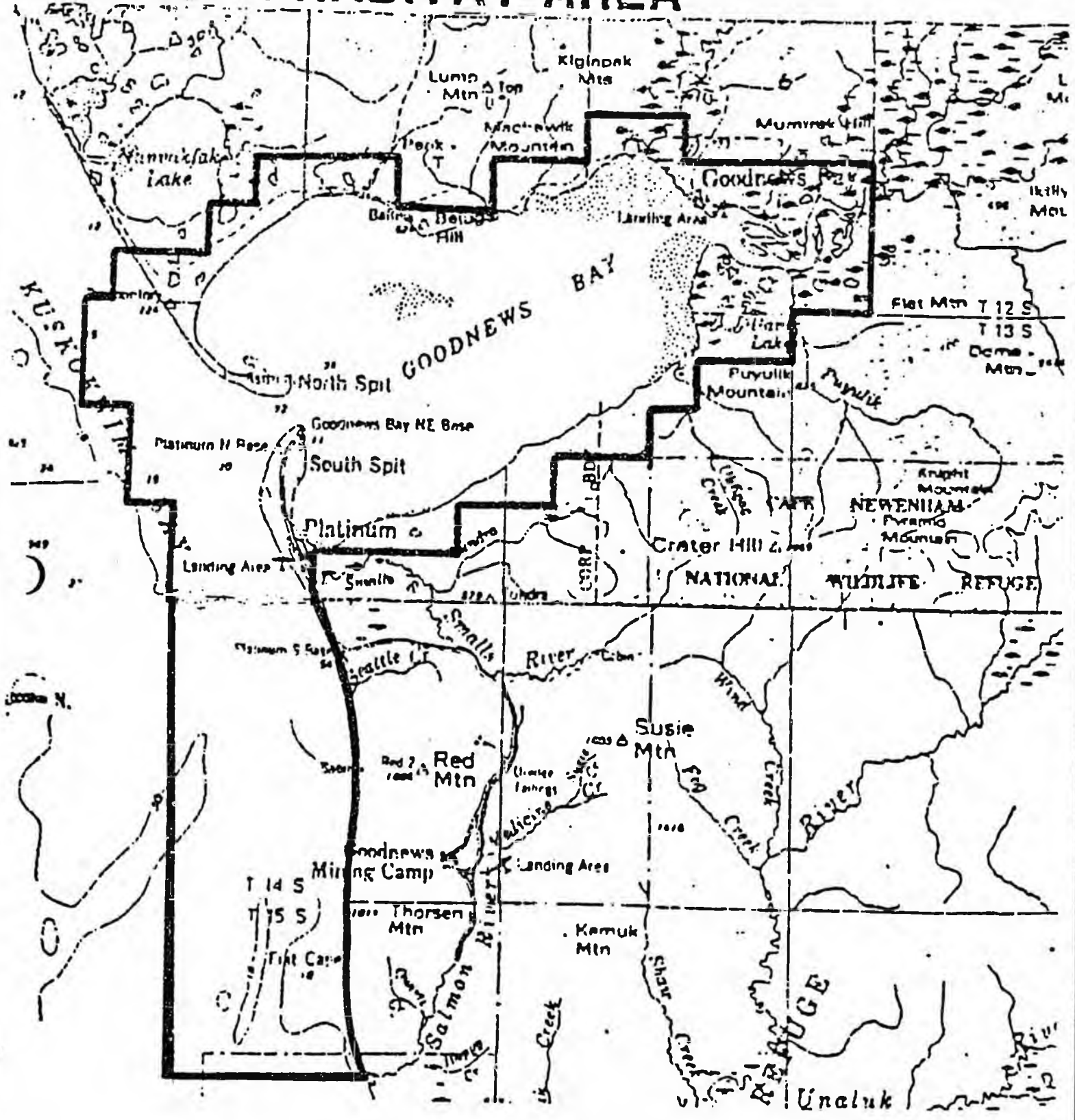
## INDEX

1. HB332, location maps & fiscal notes
2. Preliminary Best Interest Findings
3. Public Hearing Notice
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5. Public Hearing Testimony
6. Resources Committee Testimony for HB332
7. Resources Committee Testimony against HB332
8. Public Written Testimony against OPP
9. Resolutions against OPP
10. Written Testimony for OPP
11. Resource Assessment Report
12. Copy of Alaska Statutes on OPP
13. Misc.

HOUSE BILL NO. 332

"An Act establishing the  
Goodnews Bay Critical Habitat Area;  
and providing for an effective date."

# PROPOSED GOODNEWS BAY CRITICAL HABITAT AREA



STATE OF ALASKA  
**DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF MINING**

STEVE COWPER, GOVERNOR

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PHONE: (907) 465-3400

March 9, 1989

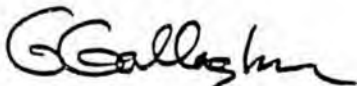
Dear Alaskan:

Enclosed for your review is a Preliminary Best Interest Finding and Proposed Consistency Determination prepared by the Alaska Department of Natural Resources, Division of Mining, regarding the issuance of offshore prospecting permits in and near Goodnews Bay, Alaska. Public comments on this document must be received by April 20, 1989 to be considered. A series of public hearings have been scheduled in Bethel, Platinum and Goodnews Bay. The enclosed Notice gives the specific dates, time and location of each public hearing and the address where written comments should be sent.

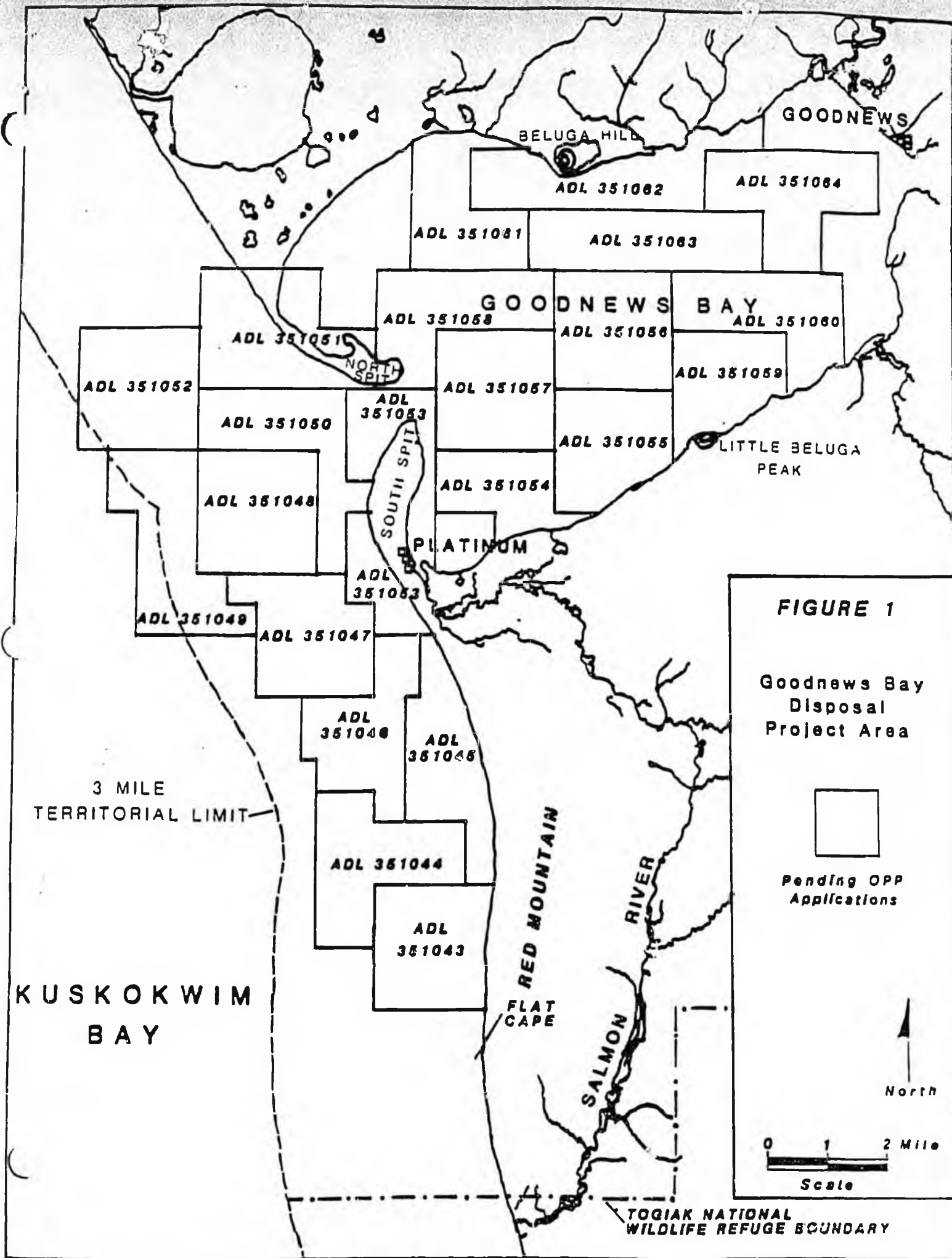
In order that all Alaskans understand this proposal, the Department has prepared a VHS video tape that explains in general terms the proposed action and the public process for comment. This video tape is in both the English language and the Yupik language. This video tape is not intended to replace the written preliminary finding, but only serve as a tool to help understand the preliminary finding. Arrangements may be made to view this video tape by contacting either Mr. Kerwin Krause at DNR's Division of Mining office in Anchorage (telephone 762-2162), or Ms. Anna Phillip at the Cenaliulit Coastal Management Program Office in Bethel (telephone 543-2243).

We look forward to your comments on this document.

Sincerely,



Gerald Gallagher  
Director



**FIGURE 1**

**Goodnews Bay  
Disposal  
Project Area**



*Pending OPP  
Applications*



**TOGIAK NATIONAL  
WILDLIFE REFUGE BOUNDARY**

Under 11 AAC 86.500, the state intended to open all tide and submerged land for offshore prospecting permit applications on June 30, 1984, unless the state finds that: (1) the land contains known mineral deposits that will be offered by competitive leasing; (2) mining would be incompatible with significant surface use; or (3) adequate funding has not been appropriated for disposal of these minerals under the procedures provided by law. At this time, adequate funding has not been provided for this program and the state's tide and submerged lands are closed to the filing of new OPF applications. This finding proposes to open a small, discreet portion of tide and submerged lands, and is not intended to open the remainder of state tide and submerged lands to the filing of OPF applications.

The key authority relating to offshore mining is found in Alaska law, AS 38.05.250. The state owns the mineral rights in almost all land covered by tidal waters along the coast, regardless of the ownership of adjoining upland (43 U.S.C. secs. 1301 et seq., the Submerged Lands Act). The Alaska offshore mining program applies to mineral resources on the State's submerged lands which are lands covered by tidal waters between the line of mean high water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state.

38.05.250. Prospecting permits and leases on tide and submerged land. (a) The exclusive right to prospect for deposits of minerals subject to AS 38.05.185 - 38.05.275 in or on tide and submerged state land may be granted by a permit issued by the director. Permits shall be granted to the first qualified applicant. A permit may not include an area larger than 2,560 acres, subject to the rule of approximation. Lands subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 10 years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following four years. The rental shall be \$3 per acre for the first two-year period of the permit, payable on the second anniversary of the permit and \$3 per acre each following year, payable annually on the anniversary date of the permit. Minerals from land under a prospecting permit may not be mined and marketed or used, except for limited amounts necessary for sampling or testing. A person may not take or hold prospecting permits for minerals on state land under this section exceeding in the aggregate 300,000 acres. A person may not take or hold leases for minerals on state land under this section exceeding in the aggregate 100,000 acres.

A summary of the statutory and regulatory terms for offshore prospecting permits and leases is contained in Table 1. Before issuing a permit or lease, the Division of Mining (DOM) must comply with laws applicable to the "disposal of an interest in state land" (transferring state-owned property rights). One of those laws is AS 38.05.035(e), which requires that I prepare a written finding that the state's interests will best be served by issuance

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

STATE OF ALASKA  
**DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF MINING**

STEVE COWPER, GOVERNOR

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March 9, 1989

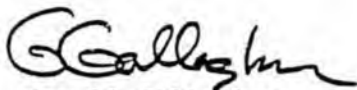
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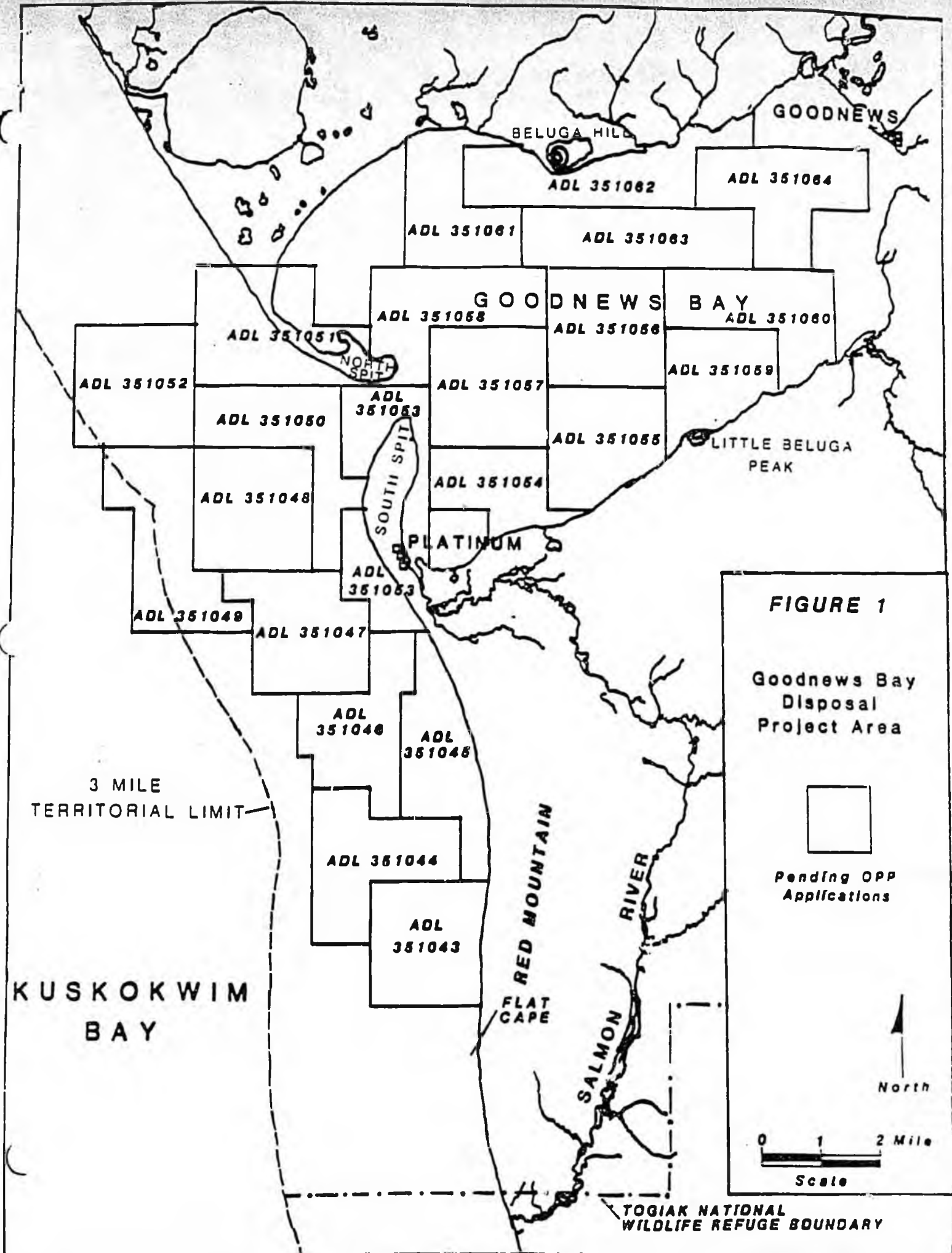


Gerald Callagher  
Director

PRELIMINARY FINDING OF THE DIRECTOR  
AND COASTAL CONSISTENCY DETERMINATION  
REGARDING ISSUANCE OF OFFSHORE  
PROSPECTING PERMITS IN AND NEAR  
GOODNEWS BAY, ALASKA

State of Alaska  
Department of Natural Resources  
Division of Mining  
Anchorage, Alaska

March 9, 1989



**FIGURE 1**

Goodnews Bay  
Disposal  
Project Area



Pending OPP  
Applications



TOGIAK NATIONAL  
WILDLIFE REFUGE BOUNDARY

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### Objectives of The State Offshore Mining Program

By issuing offshore prospecting permits and leases for offshore exploration and eventual development, the State of Alaska seeks to diversify its economic base and employment opportunities and to make mineral exploration and development possible on tide and submerged land. Administration of the State's offshore program is guided by the following objectives:

1. To offer the state's promising offshore areas for exploration and development by private industry.
2. To develop an offshore mining industry that could provide stable and diverse job opportunities for Alaska's local communities.
3. To develop offshore resources that would contribute to the industrial needs and strategic mineral base of Alaska and the United States.
4. To increase the knowledge of Alaska's offshore resources by the collection of geologic, geochemical, and geophysical data.
5. To minimize negative effects upon the environment through permit and lease stipulations, plans of operations, and comprehensive monitoring of operations.
6. To consider and incorporate the views of the general public, government agencies, the mining industry, local residents, and other resource users when selecting and refining particular areas for offshore prospecting permits and when designing the terms of the disposal.
7. To establish and broaden the stable long-term economic and revenue base of the state and local government.
8. To stimulate the growth of other industries through the use of shared infrastructure.

### Policy and Statutory Background of the State Offshore Program

The primary policies governing Alaska's offshore mining program are found in the Constitution of the State of Alaska, which became operative with the formal proclamation of statehood on January 3, 1959. Article VIII of the constitution is devoted exclusively to natural resources and signifies the importance of minerals, fish and wildlife to the state. Section 8 authorizes exploration permits and leases for any of the resources within the public domain. Sections 11 and 12 specifically address mineral rights, leases and permits. In 1959 the Alaska legislature passed the Alaska Lands Act and established the framework for state mining law. The Act stated that, in the case of tide and submerged lands, "the right to mine and remove such (locatable) minerals may be acquired only by lease". Basic provisions of the current law were set out in statute AS 38.05.250.

Under 11 AAC 86.500, the state intended to open all tide and submerged land for offshore prospecting permit applications on June 30, 1984, unless the state finds that: (1) the land contains known mineral deposits that will be offered by competitive leasing; (2) mining would be incompatible with significant surface use; or (3) adequate funding has not been appropriated for disposal of these minerals under the procedures provided by law. At this time, adequate funding has not been provided for this program and the state's tide and submerged lands are closed to the filing of new OPP applications. This finding proposes to open a small, discreet portion of tide and submerged lands, and is not intended to open the remainder of state tide and submerged lands to the filing of OPP applications.

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A summary of the statutory and regulatory terms for offshore prospecting permits and leases is contained in Table 1. Before issuing a permit or lease, the Division of Mining (DOM) must comply with laws applicable to the "disposal of an interest in state land" (transferring state-owned property rights). One of those laws is AS 38.05.035(e), which requires that I prepare a written finding that the state's interests will best be served by issuance

### Best Interest Finding

Determining whether the proposed disposal will best serve the state's interests is only possible after considering the potentially positive and negative aspects of the disposal. Offshore lands are subject to multiple and sometimes conflicting uses as described in the Resource Assessment Report (Appendix A). Extreme adverse effects created by a disposal will be avoided by deletion of certain areas from that disposal. Less adverse effects can be lessened or eliminated through mitigation, permit stipulation, and monitoring requirements.

The Resource Assessment Report (RAR) provides a detailed description of the biologic, oceanographic, physical, social and economic resources of the project area. That description is not repeated here, but is incorporated in its entirety as Appendix A. The reader is encouraged to review this information. Section A of the RAR describes the physiography, coastal processes, geology and mineral potential of the project area. In addition, it describes possible mining technologies that could be utilized. It also includes estimates of activity, drilling, geophysical assessments, and production scenarios. Section B of the RAR describes the biological resources present in the disposal area. This section also identifies potential impacts that mining exploration and mining production may have upon these biological resources, and mitigation alternatives that can be implemented to reduce these impacts so that they do not endanger the resources. The mitigation measures described may be incorporated through stipulation requirements into the OPP, a mining lease or any exploration and/or mining permits issued.

Section C of the RAR describes community, subsistence, commercial fishing and land use issues. This section of the report emphasizes several important issues, the subsistence lifestyle, and how it relates to the communities social and economic activities, and the concern local residents have for mining impacts on subsistence and commercial fishing. Chapter 4 specifically addresses exploration and mining impacts to community life, subsistence activities, commercial fishing and general land use. The chapter indicates how subsistence activities would be impacted if mining exploration or production are allowed in Goodnews Bay. Chapter 6 of Section C deals with mitigation alternatives. The chapter specifically recommends mitigation applicable to scheduling mining exploration and production activities, limitations on areas explored or mined, and how exploration and mining might benefit the communities.

The RAR and information obtained from several informal public meetings held in Platinum and Goodnews Bay indicate the importance of the subsistence life style and the delicate marine ecosystem that must be protected during offshore exploration and mining operations. The biological resources are the mainstay of life in the Platinum and Goodnews Bay communities, and the resources will be protected under the mitigation measures identified.

On the other hand, there is good potential for a valuable platinum resource to be present in the offshore areas of the project area. Exploration and

gradually increasing in size due to sedimentation from the Goodnews and Tunulik Rivers. The shallow muddy substrate in the bay is host to extensive eelgrass growth. The eelgrass beds are where the herring spawn. OPP tracts covering portions of the bay which contain significant eelgrass beds will not be issued. Exploration activities in portions of the bay containing eelgrass would have very little impact upon the biological productivity associated with the eelgrass, however future dredging would most likely destroy the eelgrass, and for this reason those pending OPP's will be rejected. In addition, OPP applications that include the North and South Spit tidal areas will be rejected. These areas are also the site of important subsistence and commercial fisheries. Rejected OPP applications by ADL number are 351051, 351053, 351054, 351055, 351057, 351058, 351059, 351061, 351062 and 351064. Three tracts in the bay do not contain significant eelgrass beds. The 3 tracts identified by ADL number are 351056, 351060 and 351063 (see fig. 1). These 3 tracts overlies the sand bars in the central portion of the bay. The Department proposes to issue these OPP's subject to the following discussion.

The attached Resource Assessment Report concludes that Goodnews Bay is an area of high biological productivity during the spring, summer and early fall. The bay's importance for subsistence and commercial fishing during this time period is also very evident. The level of biological activity and fishing drops off in late September, after the late salmon runs enter the rivers and juvenile fish species move out of the bay to offshore overwintering areas. The period of time that exploration activities could occur on the 3 tracts in the middle of the bay (ADL's 351056, 351060, 351063) would be for 3 months only, from September 15 through December 15 each year. Limiting exploration activities to this 3 month period will be the primary mitigation measure to minimize adverse impacts. Restricting exploration to this time period will also avoid area conflicts with winter tomcod fishing areas and lessen conflicts with winter seal and sealion hunting which occurs within the bay and near the bay entrance from October through April. Since exploration would be limited to the period of September 15 to December 15, some of it would be conducted during open water and some would be done through the ice. The geophysical exploration and drilling of sand bars would not damage the environment or leave permanent traces. The exploration activities would conflict with 2 1/2 months of the 7 month long marine mammal hunting period, but potential user conflicts would be minimized in the site specific permitting process.

Exploration on these above 3 tracts would likely take the full 10 years to complete due to the short 3 month working period. If workable placer deposits were discovered, then a dredging technique would have to be considered that addressed the shallow depths of this area. Because the bay is gradually infilling from river sediment discharge, and since boat navigation is sometimes hazardous in the bay during low tide, dredging the sediments on the sand bars in the middle of the bay and discharging the sediments on-shore could open up navigational channels that might be beneficial to future boat navigation and fish migration. Turbidity plumes created by dredging and discharge would be reduced through the use of silt curtains or other physical barriers, thus the threat of discharged sedimentation covering eelgrass beds could be minimized. Another concern within the bay is noise and disturbance created by low flying aircraft and boat traffic supporting exploration activities near bird nesting colonies at

stipulation requiring an analysis of the area and timing of fish migration along the coast line prior to conversion to lease. Within 500 feet of shore, bulk sampling (in excess of 10 cubic yards) will be prohibited between April 15 and September 15 each year. During the spring each year, capelin and surf smelt are known to spawn along the beaches at high tide from Platinum to south of the Salmon River. According to ADF&G, the annual movement of salmon and other forage fish through this part of Kuskokwim Bay begins in May and continues into September. It is thought that most fish migration occurs near shore. Also present in the nearshore zone between Goodnews Bay and the Salmon River are surf clams and a blue mussel bed at flat cape. With proper timing, exploration activities will have negligible effects on fish migrations, fish spawning, marine mammals, clam beds, or blue mussel beds.

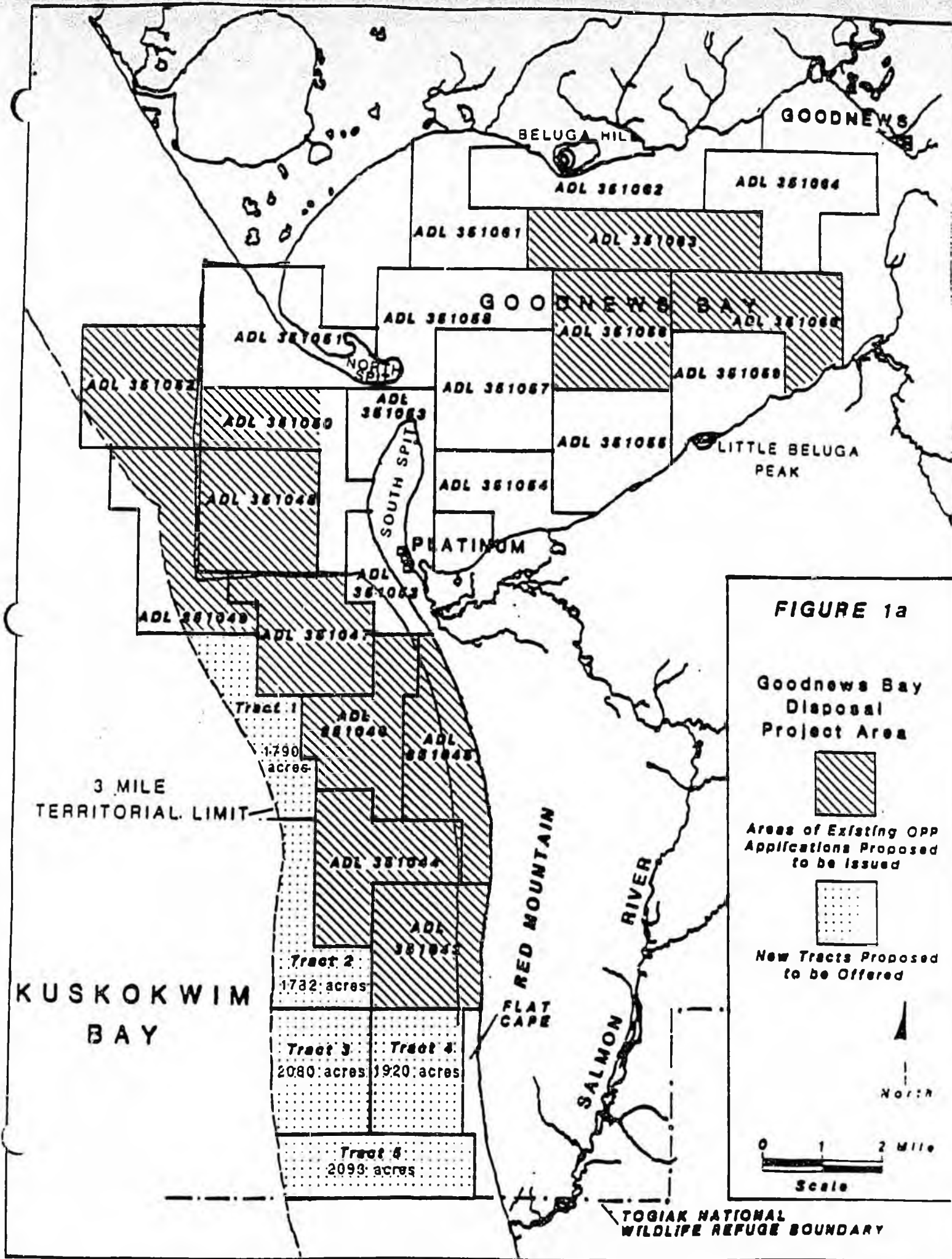
The Department also proposes to lease 5 tracts not now under OPP application. These 5 tracts are shown on figure 1a, and labeled as Tract 1 through Tract 5. Because the tracts are all at least 1320 from shore, no timing or bulk sampling restrictions are proposed.

These tracts will be leased non-competitively under the process defined by 11 AAC 82.500 - .540. Under the time frames put forth in the final Best Interest Finding, the Department will accept applications for each tract from qualified applicants (see 11 AAC 82.200 - .205) during a 30 day filing period. At the close of this period, a public drawing will be held to determine the priorities among these applications. The filing period, date of the drawing, and location of the drawing will be provided in the final Best Interest Finding and accompanying notice.

Proposed Stipulations for ADL's 351043, 351045, 351048, 351050

1. On OPP's ADL 351048 and 351050, exploration and mining during periods of mammal haul out are prohibited.
2. On OPP's ADL 351043 and 351045, a sonar analysis to determine both the area and timing of fish migration along the coast must be provided to DNR prior to lease conversion. The Department reserves the right to prohibit or restrict mining within 500 feet of the shoreline based upon this information.
3. On OPP's 315043 and 315045, bulk sampling in excess of 10 cubic yards within 500 feet of the shore line will be prohibited during the period April 15 to September 15 each year, until the sonar analysis in stipulation 2 is provided. Based upon that information, the Department reserves the right to maintain the prohibition, modify this prohibition, or eliminate this prohibition.

Figure 1a shows those areas on which the Department intends to issue OPP's. Those include both existing OPP application by ADL number, and new tracts labeled as Tract 1 through Tract 5. Figure 1b shows those existing OPP applications that will be rejected in whole or part. Table 3 lists the acreage proposed for issuance and rejection.

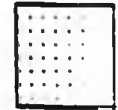


**FIGURE 1a**

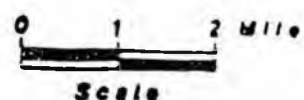
**Goodnews Bay Disposal Project Area**



Areas of Existing OPP Applications Proposed to be Issued



New Tracts Proposed to be Offered



**TOGIAK NATIONAL WILDLIFE REFUGE BOUNDARY**

Table 3

Summary of Proposed Actions by Acreage

	<u>Acres</u>
Proposed Issuance of OPP's within Goodnews Bay	- 7,488
Proposed Rejection of OPP's within Goodnews Bay	- 17,556
Proposed Issuance of OPP's Outside Goodnews Bay	- 19,665
Proposed Rejection of OPP's Outside Goodnews Bay	- 8,169
Proposed Tracts Outside of Bay Open to New Application	- 9,665

and Yupik life style was a priority in determining which OPP tracts to issue and which OPP tracts not to issue. Within Goodnews Bay, over 17,556 acres will be rejected and less than 7,500 acres are proposed for issuance. Outside of the bay, 8,169 acres will be rejected, while 19,665 acres are proposed for issuance.

Issue 2. Government Coordination (CCMP Standard 2.1): This standard requires sensitivity to the Yupik way of life and a requirement to gather information about the culture, economy and ecosystem. The attached Resource Assessment Report and information received during the public meetings have all been used in determining what tracts to issue and what stipulation measures to include in order to preserve the Yupik culture and life style.

Issue 3. Indigenous Culture (CCMP Standards 3.1, 3.2): These standards require that cultural disruption be minimized and the proposed action not destroy or interfere with cultural resources. Elimination of tracts used for subsistence and commercial fishing and general stipulation 2 (historical or cultural areas) address this standard.

Issue 4. History and Archaeology (CCMP Standards 4.1, 4.4): These standards provide for the protection of cultural and historic sites. General stipulation 2 addresses this concern.

Issue 5. Subsistence (CCMP Standards 5.1, 5.6): These 6 standards protect the subsistence resources and subsistence lifestyles of the local people. OPP applications overlapping critical subsistence use areas inside Goodnews Bay and outside of the bay entrance were all rejected due primarily to subsistence use. Only 3 tracts out of 11 pending OPP applications are being selected for issuance in the bay. Exploration on these 3 tracts will be prohibited during all periods of subsistence activity. In addition, site specific activities will be evaluated during the permitting process.

Issue 6. Environmental Management (CCMP Standards 6.1, 6.3): The 3 standards related to environmental protection rated very important in making the decision as to which OPP's to issue and which to reject. Deletion of 11 of the 22 tracts maximized this protection in compliance with these standards. Timing and monitoring stipulations attached to the proposed OPP's will further protect the environment. The timing restriction inside Goodnews Bay and nearshore outside of the bay will protect migratory fish. Finally, the permit process will provide continued site specific protection measures.

Issue 7. Development in General (CCMP Standards 7.1 - 7.8): These standards guide industrial development and two standards, 7.5 and 7.6, are particularly applicable. The activities must be consistent with the standards of the ACMP and processing must be conducted in compliance with state and federal water quality standards. The states permitting process will assure compliance with these standards.

Issue 8. Fish and Wildlife Habitats (CCMP Standards 8.1 - 8.10): Compliance with the 10 standards listed to protect fish and wildlife resulted in the exclusion of 11 of the 22 tracts in the disposal area. The standards included under this issue were established to protect the marine and onshore

Upon review of resource information, and with certain tract deletions and proposed stipulations, I find the proposed offshore prospecting permit disposal in the Goodnews bay area to be in the best interest of the State of Alaska and consistent with the ACMP and CCMP standards. The disposal will be modified based on this comment period.

Call For Public Comments

This document is a preliminary finding and no conclusions have been reached at this time. Public comments regarding this document must be received by April 15, 1989. Comments must be mailed to:

Mr. Kerwin Krause  
Department of Natural Resources  
Division of Mining  
P.O. Box 107016  
Anchorage, Alaska 99510

Comments will be considered in the final decision and finding, which will contain my determination as to whether this disposal best serves the interests of the state.

3/9/89

Date

Gerald Gallagher  
Gerald Gallagher, Director  
Division of Mining

NOTICE

Preliminary Best Interest Finding and Proposed Consistency  
Determination Regarding Issuance of Offshore  
Prospecting Permits in and Near  
Goodnews Bay, Alaska

Call for Comments and Notice of Public Hearings

The Alaska Department of Natural Resources, Division of Mining, hereby gives notice under AS 38.05.945(a)(3) of the publication of a Preliminary Best Interest Finding and Consistency Determination regarding the proposed issuance of offshore prospecting permits near Goodnews Bay and Platinum, Alaska. This document is issued pursuant to AS 38.05.035(e), and is intended to allow the public to comment on the proposed action and to assist the Director of the Division of Mining in making a final written finding and decision whether granting the offshore prospecting permits is in the best interests of the state and is consistent with the Alaska Coastal Management Program. A copy of this document may be requested from the Division of Mining at the address shown below.

The state's authority for the proposed action is found in AS 38.05.250. An offshore prospecting permit is an exclusive right to explore for locatable minerals (platinum, gold, etc.) on state owned tide and submerged land for a non-renewable period of 10 years. If the permittee discovers workable mineral deposits, he or she is entitled to a noncompetitive mining lease.

The state proposes to grant offshore prospecting permits in and near Goodnews Bay, Alaska, on part or all of the tide and submerged lands located in the Seward Meridian within:

- Township 12 South, Range 75 West, Secs. 34-36;
- Township 13 South, Range 75 West, Secs. 1,2,11,12;
- Township 13 South, Range 74 West, Secs. 4,5,6,9;
- Township 13 South, Range 76 West, Secs. 9,10,15,16,22,27,34;
- Township 14 South, Range 76 West, Secs. 1,2,12,13,24,25,36;
- Township 14 South, Range 75 West, Secs. 5-9,16-21,28-33;
- Township 15 South, Range 75 West, Secs. 4-9,16-18;
- Township 15 South, Range 76 West, Secs. 1,12,13.

The preliminary finding describes areas where the Director proposes to issue offshore prospecting permits, discusses excluded areas where the Director does not consider it in the best interest of the state to grant permits, and sets out the terms and conditions thought to be necessary to serve the state's interest or to be consistent with the Alaska Coastal Management Program. Included are 27,153 acres that would be granted to an existing applicant and 9,665 acres that would be opened to new applications.

The public is invited to comment on the preliminary best interest finding and the proposed consistency determination. Written comments must be received by April 20, 1989 in order to be considered. Public hearings will be held to accept verbal comments about the proposed action as outlined below:

Date:	Apr 17, 1989	Date:	Apr 18, 1989	Date:	Apr 19, 1989
Location:	Bethel, AK Bethel Regional High School	Location:	Platinum, AK Arviq Store	Location:	Goodnews Bay, AK Town Meeting Hall
Time:	7:00 p.m.		2:00 p.m.	Time:	2:00 p.m.

After an analysis of public and agency comment, a decision will be made on this disposal. Should the division proceed with the Goodnews Bay disposal, a final best interest finding and consistency determination should be available about May 15, 1989. The final finding and determination will be based on information and analyses presented here and on comments received about this document. Please send written comments to:

Department of Natural Resources  
Division of Mining  
ATTN: Kerwin Krause  
P.O. Box 107016  
Anchorage, AK 99510  
Phone: 762-2162

0195K

Attachment

STEVE COWPER, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**

**DIVISION OF MINING**

JAN 26 1990

P.O. BOX 107016  
ANCHORAGE, ALASKA 99510-7016  
PHONE: (907) 762-2160

3700 AIRPORT WAY  
FAIRBANKS, ALASKA 99709  
PHONE: (907) 451-2790

400 WILLOUGHBY #400  
JUNEAU, ALASKA 99801-1000  
PHONE: (907) 465-3400

January 19, 1990

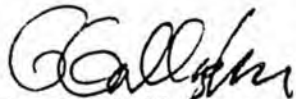
Mr. Bob Herron  
c/o Representative Hoffman's Office  
P.O. Box V  
Juneau, AK 99811

Dear Bob,

As we discussed on the phone yesterday, the Division of Mining is still in the process of considering the comments on the proposed offshore prospecting permit disposals near Goodnews Bay and Platinum. The resource issues are complex and require careful analysis.

If I can provide any further information, please do not hesitate to call me.

Sincerely,



Gerald Gallagher  
Director

January 31, 1990  
Alaska Department of Fish and Game  
Habitat Division

Proposed Goodnews Bay Critical Habitat Area  
Background Information

Location: The proposed Goodnews Bay Critical Habitat Area is located on the Bering Sea coast in western Alaska, north of Cape Newenham and in the southern portion of Kuskokwim Bay.

Area Description: The proposed Goodnews Bay Critical Habitat Area encompasses shallow nearshore waters in Goodnews Bay and all the tide and submerged lands along the coast from South Spit to the Salmon River. The bay is very shallow, encompassing extensive tidal flats at the head of the bay and large eelgrass beds behind North and South Spits.

Justification: The proposed Goodnews Bay Critical Habitat Area supports one of the region's primary herring spawning areas with herring spawning concentrations found both in the bay and also extending from South Spit down the coast to the Salmon River. Historically, the estimated biomass of herring in the Goodnews Bay District has ranged from 400 tons in 1980 to 7,400 tons in 1979. The peak in-season biomass estimate in 1989 was 4,044 tons. Smelt and capelin also spawn in the bay. Salmon move through the bay, returning to spawn in Goodnews, Smalls and Tunulik rivers. A major blue mussel bed extends from the vicinity of Flat Cape south along the coast to Platinum. Brown bears range along the shoreline during summer months. Gray whales, an endangered species, migrate through nearshore waters off Goodnews Bay and have been observed feeding on spawning herring in the shallow subtidal area off the face of Red Mountain. The area is also an important feeding area for Steller sea lions, a species in serious decline at this time. Beluga whales have reappeared in the area in the last two years after a long absence. Goodnews Bay and its eelgrass beds also provide an important spring and fall resting and feeding area for ducks and geese on their way to and from nesting grounds to the north. Emperor geese and Pacific black brant use the eelgrass beds behind North and South spits while sea ducks including black and surf scoters, goldeneyes, Steller eider, and oldsquaw can be found at the head of the bay. Canada geese and tundra swans also stop to rest and feed in the bay. There is also a large nesting colony of Arctic terns on the South Spit. The terns feed in nearshore waters and along the tideline.

Land Status: The proposed critical habitat area encompasses approximately 81,920 acres and is composed entirely of state tide and submerged lands and waters.

Current Uses: The communities of Goodnews Bay and Platinum are located on the shores of Goodnews Bay. The economy of Goodnews Bay is primarily dependent on fishing. Drift netting for salmon and set netting for herring occur in the bay. Approximately 20 set net salmon fishing sites are located in the bay. Approximately 67,000 salmon (chinook, sockeye, chum, and coho) were caught commercially in 1989 in the Goodnews Bay District for a value of \$371,568. The 1989 herring harvest in the Goodnews Bay District totaled 616 tons. The total ex-vessel value of the herring harvest was approximately \$335,000.

Other Natural Resources: The proposed Goodnews Bay Critical Habitat Area encompasses tracts proposed for offshore mining of platinum and significant platinum resources are thought to occur offshore of Red Mountain.

Pending Actions: The Alaska Department of Natural Resources Division of Mining has proposed issuing offshore prospecting permits for the mining of platinum off of the mouth of Goodnews Bay and offshore of Red Mountain just to the south. Local residents and the ADF&G have expressed concern regarding the impacts of offshore mining on fish resources, especially herring and salmon; on migratory waterfowl; and on marine mammals.

# STATE OF ALASKA

LYMAN F. HOFFMAN  
REPRESENTATIVE



P O BOX 1  
JUNEAU, ALASKA 99811  
(907) 465-4530, 465-4453

## HOUSE OF REPRESENTATIVES

### DISTRICT ..

AKJACHAK  
AKJAK  
ATMALTUAK  
BETHEL  
CHEFORNAK  
EEK  
GOODNEWS BAY  
KASIGLUK  
KIPNUK  
KONGIGANAK  
KWETHLUK  
KWIGILLINGOK  
MEKORYUK  
NAPAKJAK  
NAPASKJAK  
NEWTOK  
NIGHTMUTE  
NUNAPITCHLUK  
OSCARVILLE  
PLATINUM  
QUINHAGAK  
TOKSOOK BAY  
TUNTUTLIAK  
TUNUNAK

April 24, 1989

Commissioner Lennie Boston-Gorsuch  
Department of Natural Resources  
400 Willoughby Avenue  
Juneau, Alaska 99811

Dear Commissioner Gorsuch:

This is a letter requesting the Department of Natural Resources and the Division of Mining to stop the proposed issuing of Offshore Prospecting Permits in the coastal areas near Platinum and within Goodnews Bay. There are a number of sound reasons for not continuing this course of action.

First of all, the residents of Goodnews Bay and Platinum are nearly unanimous in their opposition to such a permitting proposal. These mostly Native people are dependent on the subsistence and commercial harvesting of herring, salmon, clams, marine mammals and birds in this area. It has been determined by the Alaska Department of Fish & Game that dredging, especially within Goodnews Bay itself, will have a detrimental and devastating effect on marine life.

In the Resource Assessment Report from the Preliminary Finding which was issued by your department, several facts are extremely disturbing. It states that the proposed offshore tracts in this area contain no known mineable placer reserves, yet the Division of Mining apparently believes that it is worth risking a valuable, renewable herring and salmon fishery for an unknown, non-renewable mineral resource.

The report further admits to the risk of possible fuel spills and that noise and vessel traffic are likely to disturb the natural environment. Your findings also admit that biological productivity will be lost in the short term on all sea floor areas that are excavated by dredging, and that long-term biological impacts may result if critical species of plant life such as eel grass fail to recolonize.

Your Preliminary Finding report has failed to include accurate and complete subsistence information. This was pointed out during the recent hearings in Bethel, Platinum and Goodnews Bay by the local residents and previously by the Department of Fish & Game - Subsistence Division. Furthermore, I concur with the Cenaliulriit Coastal Management Program in strongly opposing all offshore mining activity in this area due to the danger and uncertainty it poses for the natural environment and to the users of the area.

I would appreciate an explanation of logic for wanting to proceed with issuing offshore prospecting permits in the Platinum and Goodnews Bay area. It is obvious that any offshore mining will adversely affect the environment and the people in the area. I question that this is a good public policy decision. I expect the Department to reevaluate the cost/benefit of this issue. It is apparent that the social and economic costs far outweigh any profit that such speculation may produce.

I request that you respond to my concerns in writing within five working days.

Sincerely:



Lyman F. Hoffman  
Alaska State Representative

cc: Governor Steve Cowper  
Senator John Binkley  
Cenaliuriiit, Inc.  
Nunam Kitlutsisti  
Kuitsarak, Inc.  
Arviq, Inc.  
Tundra Drums  
Grant Fairbanks

## Senator John Binkley

Senate Finance Committee  
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



May 2, 1989

Finance Committee  
Co-Chairman

Commissioner Lennie Gorsuch  
Department of Natural Resources  
400 Willoughby Avenue  
Juneau, Alaska 99811

TO BE HAND DELIVERED

Dear Commissioner Gorsuch:

I am formally requesting that the Department of Natural Resources postpone any action on proposed offshore mining permits in and near Goodnews Bay until there have been further studies conducted on the impacts of offshore mining on fish and wildlife resources in the area, and until there is support for offshore mining from a majority of the residents of both Goodnews Bay and Platinum.

Currently, there is near unanimous opposition of this project by all of the local residents who would be most impacted by it. In a series of public meetings and hearings and through resolutions from city and traditional councils, the nearby communities have expressed their serious concern with how mining activities could affect their own subsistence, commercial and recreational activities. Goodnews Bay and the area outside the Bay are intensively used by local residents for the harvesting of herring, salmon, clams, marine mammals and birds.

The Alaska Department of Fish and Game has stated that dredging within Goodnews Bay itself would have serious, and perhaps devastating, impacts on the valuable fisheries and wildlife resources. There should be absolutely no mining activity within the Bay. I believe the impacts of mining activity within the project area offshore of Goodnews Bay however, have not been adequately addressed within the Resource Assessment Report from the Preliminary Finding. The report does not address the turbidity issue resulting from local tides flushing sediments from dredging activities outside the bay directly into the bay. Local residents and the Cenaliulriit Coastal Resource Service Board are very concerned that such sediments would destroy the highly sensitive eelgrass beds in the bay used by spawning herring.

In addition, the toxicity question has not been adequately addressed in your preliminary finding. Already Norton Sound has increased levels of mercury contamination. Any elevation of those levels as a result of even minor

May 2, 1989  
Page Two

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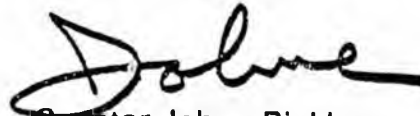
amounts of dredging could result in making all marine mammals inedible for human consumption.

Testimony at recent public meetings in Platinum and Goodnews Bay indicated that the Resource Assessment Report's evaluation of subsistence usage of the proposed project area is not accurate, particularly concerning the usage of marine mammals.

With this proposal, I believe the Department of Natural Resources is attempting to circumvent the intent of state law 11 AAC 86.500 in two respects. First, there is significant surface use of the area, and mining would be incompatible with such use. And second, no new offshore prospecting permit applications are to be allowed unless the Legislature has provided adequate funding for this program. Your own preliminary finding admits that such funding has not been provided and that is why this project proposes opening only a "small, discreet portion of tide and submerged lands." I believe this directly violates state law.

For these reasons, I believe the Department should immediately cancel this proposal, conduct further research and analysis of the areas of concern mentioned by myself and others, and work further with the residents of Platinum and Goodnews Bay. Since there are no known mineral deposits in the area, the state would have little to gain by proceeding with this proposal, yet the residents of the area would have everything to lose.

Sincerely,



Senator John Binkley  
Yukon-Kuskokwim and  
Interior Rivers

mem

cc: Governor Steve Cowper  
Tundra Drums

STATE OF ALASKA  
**DEPARTMENT OF NATURAL RESOURCES**

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1798  
PHONE: (907) 465-2400

May 1, 1989

The Honorable John Binkley  
Alaska State Senator  
P.O. Box V  
Juneau, AK 99811

The Honorable Lyman Hoffman  
Alaska State Representative  
P.O. Box V  
Juneau, AK 99811

Dear Senator Binkley and Representative Hoffman:

This letter responds to your inquiry concerning the timing of the decision making process for the proposed Goodnews Bay offshore prospecting permit best interest finding. As you know, the preliminary best interest finding was released for public comment on March 9, 1989. Public hearings were held in Bethel, Platinum, and Goodnews Bay on April 17, 18, and 19, respectively.

The original notice indicated the comment period would close on April 20. However, at the request of the village of Goodnews Bay, the comment period was extended to May 1. Last Friday, the Alaska Department of Fish and Game and the Cenaliurliit Coastal Management representative requested another extension until Monday, May 8. The village of Goodnews made a similar request this morning. That extension has been granted.

At the close of the comment period, the department must carefully consider all comments, correct the preliminary report as necessary, and continue discussions with the Departments of Fish and Game and Environmental Conservation and the local coastal district. Because any decision to issue or reject OPP's must be done with the concurrence of the three state resource departments, each must agree with the final decision.

There is no formal timeframe for the agencies to reach consensus during this process. However, past experience indicates that at least 30 days will

Senator Binkley  
Representative Hoffman

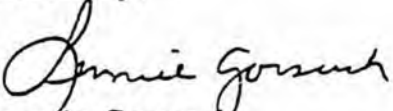
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May 1, 1989

be required to reach this point. Under these timeframes, I believe a final decision will be reached on this proposal in mid to late June.

If you have any further questions, please feel free to contact me.

Sincerely,

  
Lennie Gorsuch  
Commissioner

CENTRAL REGION  
DEPARTMENT OF TRANSPORTATION and PUBLIC FACILITIES

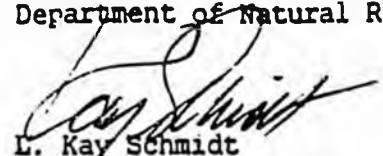
**MEMORANDUM** **State of Alaska**

TO: Gerald Gallagher, Director  
Division of Mining  
Department of Natural Resources

DATE: April 6, 1989

FILE NO:

TELEPHONE NO: Ext. 470

FROM:   
L. Kay Schmidt  
Regional Planning Manger

SUBJECT: Goodnews Bay  
Preliminary BIF

The Department of Transportation and Public Facilities (DOT&PF), Central Region Planning Section has completed its review of the Preliminary Best Interest Finding and Proposed Consistency Determination prepared by the DNR Division of Mining regarding the issuance of offshore prospecting permits in the Goodnews Bay area.

We have the following comments regarding runway and navigational aids improvements recommended at Platinum Airport or Goodnews Bay Airport to handle transport aircraft supplying the proposed mining activity. The department presently has no capital improvements planned for either of these two state-owned airports in our FY'90-95 Capital Improvements Program because of the priority needs of other state airports and declining state revenue dollars.

Thank you for the opportunity to comment on this Preliminary Best Interest Finding regarding proposed mining in Goodnews Bay. Please contact Roger Maggard, DOT&PF Area Planner, at 266-1653 if you have any questions.

JHH:kc

FBI

HEARING ON

Preliminary Best Interest Finding and Proposed Consistency  
Determination Regarding Issuance of Offshore  
Prospecting Permits in and Near  
Goodnews Bay, Alaska

TESTIMONY ON BEHALF OF

KUITSARAK, INC.

APRIL 19, 1969

KUITSARAK, INC. IS THE ANCSA VILLAGE CORPORATION FOR GOODNEWS BAY, ALASKA. WE HAVE 224 SHAREHOLDERS, NEARLY THE ENTIRE ADULT POPULATION OF GOODNEWS BAY. WE APPRECIATE THE OPPORTUNITY TO TESTIFY ON THE PRELIMINARY BEST INTEREST FINDING ("PBIF") OF THE ALASKA DEPARTMENT OF NATURAL RESOURCES ("DNR") ON THE PROPOSED DISPOSAL OF STATE LANDS FOR OFFSHORE MINING IN AND NEAR GOODNEWS BAY. WE ALSO PLAN TO SUPPLEMENT THIS ORAL PRESENTATION WITH MORE DETAILED WRITTEN COMMENTS IN SUPPORT OF OUR POSITION.

THE PLACE YOU KNOW AS GOODNEWS BAY, WE CALL "MUMTRAK", ITS ORIGINAL YUPIK NAME. IT HAS BEEN HOME TO US AND OUR ANCESTORS FOR THOUSANDS OF YEARS, AND THAT IS ONE OF THE THOUGHTS WE WANT TO BE SURE DNR HAS IN MIND WHEN YOU DECIDE WHETHER IT IS IN THE "BEST INTEREST" OF THE STATE TO PERMIT THE DREDGE MINING OF THE BAY AND THE SURROUNDING WATERS. MANY PEOPLE COME TO GOODNEWS BAY IN THE SUMMER TO MAKE MONEY FROM OUR RICH HERRING AND SALMON FISHERIES AND OTHERS COME FOR RECREATION FISHING IN THE RIVERS WHICH EMPTY INTO THE BAY. WE TOO USE THESE RESOURCES TO EARN MONEY TO SUPPORT OUR FAMILIES IN THE CASH ECONOMY, BUT WE ALSO USE THESE AND THE OTHER RICH MARINE RESOURCES (LIKE MARINE MAMMALS, CLAYS, CRABS, BIRDS AND BIRD EGGS) DIRECTLY AS WHAT YOU CALL "SUBSISTENCE" RESOURCES. AND THAT TELLS YOU ONE OF THE BIG DIFFERENCES BETWEEN US WHO LIVE HERE AND THE PEOPLE WHO ONLY VISIT.

IF SOMETHING WERE TO HARM THE RESOURCES OF GOODNEWS BAY AND THE SURROUNDING WATERS, THE PEOPLE WHO COME HERE TO FISH WOULD LOSE A SOURCE OF PLEASURE OR EVEN THEIR LIVLIHOOD. WE WOULD LOSE OUR ENTIRE WAY OF LIFE, AND WE COULD NO LONGER EVEN LIVE IN OUR HOME! WE HAVE CAREFULLY REVIEWED THE PBIF AND THE ATTACHED RESOURCE ASSESSMENT REPORT ("RAR") AND CONSULTED WITH EXPERTS TO BE ABLE TO BETTER UNDERSTAND IT. THE PROPOSED DISPOSAL THREATENS US WITH THE RISK OF LOSING EVERYTHING WE HAVE, AND THAT CANNOT POSSIBLY BE IN THE STATE'S "BEST INTEREST".

KUITSARAK, INC. TESTIMONY  
ON DNR PBIF/GOODNEWS BAY  
APRIL 19, 1989  
PAGE TWO

THE PBIF IS AS DEFECTIVE FOR WHAT IT DOES NOT SAY AS FOR WHAT IT DOES SAY. NOT ONLY DOES IT LEAVE OUT INFORMATION ABOUT THE RENEWABLE RESOURCES WE DO HARVEST, IT EITHER IGNORES OR BRUSHES OVER MAJOR QUESTIONS SUCH AS MERCURY CONTAMINATION, FUEL SPILLS AND TURBIDITY, ANY ONE OF WHICH HAS THE POTENTIAL TO DESTROY OUR MARINE RESOURCES OR OUR ABILITY TO USE THEM. BECAUSE SO MUCH HAS BEEN LEFT OUT OF THE PBIF, WE QUESTION WHETHER SUFFICIENT TIME AND RESOURCES WENT INTO THE PREPARATION OF THE RAR ON WHICH THE PBIF IS BASED. IT WAS A MISTAKE TO PERMIT THE OFFSHORE PROSPECTING PERMIT ("OPP") HOLDERS TO HIRE THEIR OWN CONSULTANTS TO DO THE RAR. NOT ONLY DOES THIS CALL INTO QUESTION THE BIAS OF THE RAR, BUT IT ALSO DEPRIVES THE STATE OF OVERSIGHT AND CONTROL OF THE PREPARATION OF THE BASIC REPORT ON WHICH THE PBIF IS BASED. AS STATED AT PAGE 7 OF THE PBIF, UNDER 11 AAC 86.500 OF THE STATE REGULATIONS, STATE TIDE AND SUBMERGED LANDS ARE NOT TO BE OPENED TO OPPTS IF "ADEQUATE FUNDING HAS NOT BEEN APPROPRIATED FOR DISPOSAL OF . . . MINERALS UNDER THE PROCEDURES PROVIDED BY LAW."

THE PBIF GOES ON TO NOTE THAT "ADEQUATE FUNDING HAS NOT BEEN PROVIDED", SO WE ARE AT A LOSS TO UNDERSTAND HOW THE STATE WAS ABLE TO PROCEED WITH THIS DISPOSAL. APPARENTLY IT IS UNDER THE RATIONALE THAT THIS DISPOSAL ONLY AFFECTS A "SMALL, DISCREET PORTION" OF THE STATE'S SUBMERGED LANDS. THE PROBLEM IS THAT THE PBIF DOESN'T SAY THAT THIS IS ONE OF THE EXCEPTIONS TO THE LIMITS ON NEW OPPTS. EVEN IF IT WERE A VALID EXCEPTION, THAT DOESN'T EXPLAIN HOW DNR CAN ALLOW NEW OPPTS ON FIVE NEW TRACTS WHEN STATE REGULATIONS PROHIBIT DOING SO UNLESS THERE IS ADEQUATE FUNDING AND DNR HAS SPECIFICALLY FOUND THAT "ADEQUATE FUNDING HAS NOT BEEN PROVIDED". WE HAVE CONCLUDED THAT THE PROPOSED DISPOSAL AND NEW OPP OFFERING ARE THEREFORE ILLEGAL AS CONTRARY TO EXISTING STATE LAW. EVEN IF THAT WERE NOT THE CASE, THERE ARE MANY OTHER REASONS WHY THIS DISPOSAL IS NOT IN THE STATE'S BEST INTEREST AND WHY IT CANNOT GO FORWARD ON THE STRENGTH OF THIS PBIF.

FIRST, THE PBIF TOTALLY IGNORES RECENT FINDINGS CONNECTING MERCURY POISONING TO SUBMERGED LAND DREDGING. THE DRAFT ENVIRONMENTAL IMPACT STATEMENT ("EIS") PREPARED FOR THE PROPOSED NORTON SOUND SUBMERGED LAND MINING LEASES IN NOVEMBER 1988 SPECIFICALLY DISCUSSES THE RISKS OF MERCURY POISONING FROM OCEAN BOTTOM DREDGING. AMONG OTHER THINGS, THE DEIS SAYS: "MERCURY IS THE MOST TOXIC TRACE METAL

KUITSARAK, INC. TESTIMONY  
ON DNR PFIF/GOODNEWS BAY  
APRIL 19, 1989  
PAGE THREE

REGULATED BY THE EPA [THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY]. ITS TOXICITY IS OF THE SAME ORDER OF MAGNITUDE AS THAT OF SEVERAL PESTICIDES, AND A HUNDREDFOLD MORE TOXIC THAN THE OTHER TRACE METALS OF CONCERN." THE DEIS GOES ON TO SAY AT PAGE IV-B-12 THAT, UNLIKE OTHER TOXIC METALS, THE TOXIC EFFECTS OF MERCURY ARE ACTUALLY INCREASED IN THE AQUATIC FOOD CHAIN. THAT MEANS THAT THE CREATURES AT THE END OF THE FOOD CHAIN (LIKE NATIVES WHO EAT MARINE MAMMALS) ARE GOING TO GET THE HIGHEST CONCENTRATIONS OF MERCURY. THAT IS ESPECIALLY TRUE SINCE SEALS AND OTHER MARINE MAMMALS HAVE THE ABILITY TO CONCENTRATE MERCURY IN THEIR MEAT AND ORGANS, AND MARINE MAMMALS ARE ONE OF THE MAIN PARTS OF OUR DIET.

ACCORDING TO THE DEIS, THE LEVEL AT WHICH MERCURY POSES A RISK OF CONCENTRATION TO THE ANIMALS AND HUMANS IN THE MARINE FOOD CHAIN IS ONLY 0.025 PARTS PER BILLION ("PPB") OF SEA WATER. TABLE IV-8 OF THE SAME DEIS SAYS THAT THE MERCURY LEVELS IN THE CENTRAL BERING SEA (THE AREA NEAREST GOODNEWS BAY) HAS MEASURED HISTORICALLY BETWEEN 0.05 TO 0.58 PPB WITH A MEAN OF 0.22 PPB. WE ARE ALREADY AT SOME RISK BECAUSE OF THE LEVELS OF MERCURY IN THE SEA, AND THE PBIF DOESN'T GIVE ANY CONSIDERATION TO THE VERY REAL POSSIBILITY THAT THIS HEALTH RISK COULD BE INCREASED BY THE PROPOSED DISPOSAL. AT THE VERY LEAST THE PBIF SHOULD FULLY ASSESS THIS RISK AND REQUIRE THAT THERE BE NO MINING ANYWHERE INSIDE OR OUTSIDE OF THE BAY UNTIL IT IS PROVEN THAT THE LEVELS OF MERCURY IN THE SEDIMENT TO BE MINED WILL NOT ELEVATE THE LEVELS OF MERCURY IN OUR DIET TO UNHEALTHY LEVELS. YOU SHOULD BEGIN BY PROPERLY SAMPLING THE LEVELS OF MERCURY IN SEAL LIVER AND CLAMS, BECAUSE WE EAT A LOT OF THESE AND ARE ADVISED THAT THIS IS ALSO WHERE THE MERCURY CONCENTRATIONS ARE LIKELY TO BE THE HIGHEST.

AT PAGE IV-H-3 OF THE DEIS, IT SAYS THAT THE FEDERALLY APPROVED "SAFE" LEVEL FOR MERCURY IN HUMAN BLOOD IS 20 PPB AND THAT 200 PPB CAUSES NERVE DAMAGE. BUT THE TRUTH IS NOBODY KNOWS WHAT DAMAGE MERCURY MAY DO WHEN IT GETS ABOVE THE "SAFE" LEVEL, BUT BEFORE IT STARTS TO CAUSE NOTICEABLE NERVE DAMAGE. THE DEIS DOES SAY (AT PAGE IV-H-7) THAT STUDIES SHOWED MOTHERS ALONG THE YUKON-

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KUSKOKWIM COAST (JUST NORTH OF HERE) SHOWED MERCURY CONCENTRATIONS OF 22.7 TO 73.8 PPB IN THEIR BLOOD AND SUGGESTS THESE LEVELS COULD BE SUFFICIENT TO POSE A RISK TO UNBORN CHILDREN OF SUCH MOTHERS. THE NORTON SOUND DEIS CONCLUDES (AT PAGE IV-H-8) THAT IF THERE ARE ELEVATED LEVELS OF MERCURY IN SEA WATER, MARINE MAMMALS AND HUMANS, DREDGING THAT INCREASES THE LEVEL OF MERCURY IN WATER ONLY A LITTLE COULD REQUIRE PEOPLE TO STOP HUNTING AND EATING MARINE MAMMALS! IF THERE IS ANY RISK OF THAT AT ALL, IT IS NOT IN THE STATE'S BEST INTEREST TO PERMIT DREDGE MINING OFFSHORE (MUCH LESS INSIDE) OF GOODNEWS BAY.

FUEL SPILLS ARE ANOTHER POTENTIALLY DISASTROUS, BUT LARGELY IGNORED RISK OF THE PROPOSED DISPOSAL. THE RAR SAYS AT PAGE A-15 THAT ONE DREDGE WOULD USE ABOUT 500,000 GALLONS OF FUEL A SEASON. WE UNDERSTAND THAT A DREDGE THE SIZE TO BE USED HERE OFTEN HOLDS 250,000 GALLONS IN ITS OWN TANKS. THE REPORT ALSO ACKNOWLEDGES THAT THE WEATHER ALONG THE COAST WHERE THE DREDGE WOULD OPERATE IS EXTREMELY STORMY. IF THE DREDGE EVER RUNS AGROUND, CAPSIZES OR SINKS IN ONE OF THESE STORMS, THERE IS A CERTAINTY OF A CATASTROPHIC FUEL SPILL. THE SAME THING COULD HAPPEN WITH THE SUPPLY BARGE OR TANKER WHICH MIGHT HOLD UP TO 500,000 GALLONS OF FUEL. THE NEWSPAPER REPORTS COMING OUT OF VALDEZ SAID THAT PRIOR TO THE EXXON SPILL, THE OIL COMPANIES CONSIDERED EVEN A 250,000 GALLON SPILL TO BE "CATASTROPHIC". THAT IS EXACTLY THE RANGE OF THE RISK WE FACE HERE, BUT THE PBIF AND RAR HARDLY EVEN MENTION IT. FURTHERMORE, OUR EXPERTS ADVISE US THAT REFINED FUEL IS EVEN MORE TOXIC THAN CRUDE OIL, SO A LITTLE BIT WILL GO A LONG WAY.

WHAT WOULD A 250,000 GALLON FUEL SPILL, OR 125,000 GALLON ONE AS HAPPENED IN COOK INLET A YEAR OR TWO AGO, OR A 50,000 OR EVEN A 10,000 GALLON SPILL DO TO US? WE'RE AFRAID TO ASK AFTER SEEING WHAT HAPPENED IN PRINCE WILLIAM SOUND AND EARLIER IN COOK INLET, BUT YOU HAVE AN OBLIGATION TO AT LEAST ASK THESE QUESTIONS BEFORE YOU DETERMINE IT IS IN THE STATE'S "BEST INTEREST" TO TAKE SUCH A RISK HERE. WE HAVE A FULLY FUNCTIONING CASH AND SUBSISTENCE ECONOMY HERE RIGHT NOW. LAST YEAR, ACCORDING TO THE PBIF IT BROUGHT IN OVER \$1.5 MILLION FROM COMMERCIAL FISHING ALONE. THAT'S AS MUCH AS THE PBIF SAYS WILL BE BROUGHT IN BY THE 50 JOBS THAT ARE SUPPOSED TO BE CREATED

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BY THE MINING AND DOESN'T EVEN TAKE INTO ACCOUNT THE MONEY BROUGHT IN BY SPORTSMEN AND OTHERS WHO PURCHASE FUEL AND SUPPLIES FROM DISTRIBUTORS IN GOODNEWS BAY. FROM THE PBIF, IT LOOKS LIKE ALL OF THE ECONOMIC BENEFIT (SUCH AS IT IS) WILL BE CONCENTRATED IN PLATINUM. BUT WE WOULDN'T WANT THE PROJECT EVEN IF IT WERE THE OTHER WAY AROUND. ALL IT WILL DO IS SUBSTITUTE A BOOM AND BUST TYPE ECONOMY BASED ON THE RISKY DEVELOPMENT OF MINERAL RESOURCES FOR THE STABLE AND GROWING ECONOMY WE ALREADY HAVE BASED ON RENEWABLE RESOURCES.

THE PBIF IS ALSO RIDDLED WITH INCONSISTENCIES AND ITS ULTIMATE CONCLUSION TO PERMIT EXPLORATION AND MINING IS INCONSISTENT WITH BOTH THE CENALLULRIIT COASTAL RESOURCE AREA PLAN AND THE BRISTOL BAY AREA PLAN (BBAP). ONE EXAMPLE OF WHAT WE MEAN IS THE DETERMINATION AT PAGE 12 OF THE PBIF TO PERMIT EXPLORATION AND MINING ON THE SAND BARS JUST OUTSIDE THE BAY WHERE MARINE MAMMALS HAUL OUT AND WHERE WE HUNT THEM. EXPLORATION AND MINING IS TO BE PROHIBITED DURING THE TIME WE HUNT, THE ONLY PROBLEM IS WE HUNT THESE ANAMALS ALL YEAR LONG AS IS SPECIFICALLY MENTIONED AT PAGE B-14 OF THE RAR. THE WHOLE PROJECT OUGHT TO BE DROPPED, BUT IT IS INCONSISTENT WITH DNR'S OWN REPORT TO PERMIT EXPLORATION OR MINING NEAR THE AREAS WE USE TO HUNT MARINE MAMMALS.

CONTRARY TO THE ASSERTIONS AT PAGES 18 THROUGH 20 OF <sup>THE</sup> PBIF, THE PRELIMINARY FINDING IS NOT CONSISTENT WITH THE CENALLULRIIT PLAN. WE ARE SURE CENALLULRIIT WILL COMMENT ON THESE MATTERS, AND WE DO NOT PRETEND TO SPEAK FOR THEM. THE PBIF IS PARTICULARLY INCONSISTENT WITH THE CENALLULRIIT SUBSISTENCE STANDARDS (5.1 THROUGH 5.6). IN PARTICULAR THE PBIF DOES NOT ANALYZE THE "POSSIBLE ADVERSE IMPACTS OF THE ACTION ON SUBSISTENCE" WHEN IT COMES TO THE QUESTIONS OF MERCURY POISONING AND FUEL SPILLS, MUCH LESS PROVIDE SAFEGUARDS TO "ASSURE SUBSISTENCE USE." FINALLY, THE PBIF IS INCONSISTENT WITH ITS OWN DESCRIPTION OF THE BBAP AT PAGE C 3-4 OF THE RAR. THE STATED INTENT OF THE BBAP FOR THE AREA INCLUDING GOODNEWS BAY IS TO MANAGE IT "PRIMARILY FOR FISH AND WILDLIFE HABITAT (ESPECIALLY FOR COMMERCIAL FISHING AND FISH HARVESTING)." DREDGE MINING IS PERMITTED ONLY WHEN "THE PROPOSED ACTIVITY WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON FISH OR FISH HABITAT OR THAT NO FEASIBLE OR PRUDENT ALTERNATIVE SITE EXISTS TO MEET THE PUBLIC NEED." THE PBIF SIMPLY DOESN'T ADDRESS EITHER OF THESE REQUIREMENTS.

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WE DO NOT UNDERSTAND HOW DNR CAN POSSIBLY APPROVE THIS DISPOSAL OF STATE LANDS AS IN THE STATE'S "BEST INTEREST". IT APPEARS TO BE A PROPOSAL WHICH IS ONLY IN THE "SELF-INTEREST" OF A VERY FEW. WE CANNOT UNDERSTAND HOW THE STATE OF ALASKA COULD TAKE AN ACTION THAT HAS A SUBSTANTIAL RISK TO OUR LIVLIHOOD, OUR WAY OF LIFE AND PERHAPS EVEN OUR VERY OWN LIVES: WITHOUT MUCH MORE THOUGHT. THE PROPOSED DISPOSAL THREATENS EVERYTHING WE VALUE AND HOLD DEAR, AND FOR WHAT? MAYBE 50 JOBS? SO A SPECULATOR CAN MAKE A KILLING ON THE POSSIBILITY THERE IS PLATINUM OFFSHORE OF GOODNEWS BAY? HOW CAN THIS POSSIBLY BE IN THE STATE'S BEST INTEREST WHEN IT IS MEASURED AGAINST THE STABLE AND EVEN GROWING SUBSISTENCE AND CASH ECONOMY WE ALREADY HAVE? THE PROPOSED DISPOSAL IS INCONSISTENT WITH AT LEAST TWO COMPREHENSIVE RESOURCE PLANS AND THE STATE'S OWN REGULATIONS. THE DISPOSAL IS NOT IN THE STATE'S BEST INTEREST AND SHOULD BE SHELVED UNTIL IT CAN BE MORE PROPERLY EXAMINED AND THOUGHT-OUT.

QUYANAH

KUITSARAK, INC.

  
VERNON S. BAVILLA, PRESIDENT

# STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

APR 28 1989

DIVISION OF SUBSISTENCE

FEB 28 1989

STEVE COWPER, GOVERNOR

P.O. BOX 1788  
BETHEL, ALASKA 99559-1788  
PHONE: (907) 543-3100

April 24, 1989

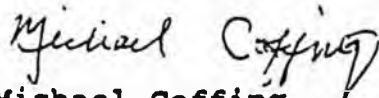
Mr. Dean Rasmussen  
Legislative Aid  
Representative Lyman Hoffman  
P.O. Box V  
Juneau, AK 99811

Dear Dean,

Enclosed are my notes of the Goodnews Bay Offshore Mining Proposal meeting, held at Goodnews Bay on Wednesday April 19. These notes may provide you with a better idea of specific issues of concern to local residents. The Department of Natural Resources taped most of the meeting and may be able to provide you with more detailed information. These notes do not contain verbatim what happened at the meeting.

As my notes illustrate, Goodnews Bay residents informed DNR that the information in the Resource Assessment Report (including the maps) were incorrect. In December 1988, the Division of Subsistence identified several errors or lack of information when reviewing an agency Draft Resource Assessment. Our comments were incorporated into a Department of Fish and Game memo to DNR on December 15, 1988. It is unfortunate that information available from the ADF&G still did not find its way into the PBIF Resource Assessment despite our efforts point out the inadequacies to DNR and to inform the consultants who prepared the Resource Assessment that the information was available. There are some major problems with the resource use area information in the PBIF Report.

Sincerely,



Michael Coffing  
Subsistence Resource Specialist

GOODNEWS BAY OFFSHORE PROSPECTING PERMIT  
MEETING AT GOODNEWS BAY, APRIL 19, 1989

NOTES TAKEN BY MICHAEL COFFING  
SUBSISTENCE DIVISION  
ADF&G, BETHEL 99559

Following are comments made by residents of Goodnews Bay who testified at the public hearing held in Goodnews Bay on April 19, 1989. In attendance from agencies were Kerwin Krause, Division of Mining, DNR, Anchorage; Anna Phillips, CZM, Bethel; and myself. Attorney David S. Case, representing the community of Goodnews Bay, also attended, as did approximately 50 individuals (DNR has a roster signed by which those attending).

The meeting was scheduled to begin at 2pm. I arrived at approximately 2:30 and the meeting was in progress. DNR had prepared large (2-foot square) maps depicting subsistence and commercial use areas (figures in the Resource Assessment) and also large maps showing the tracts proposed for lease.

The main points brought out in the public testimony were that the mapped information appearing in the Resource Assessment Report were grossly incorrect and that, as they have said several times before, the people of Goodnews Bay do not want any mining in their area. People were visibly aggravated and were frustrated that they were at another meeting repeating what they had already told DNR.

Near the end of the meeting, Vernon Bavilla asked if I could add anything regarding the Department of Fish and Game and Subsistence Division position on the DNR proposed mining. I stated that ADF&G was opposed to any mining within Goodnews Bay and that we had concerns about mining in the offshore areas outside of Goodnews Bay. I briefly explained that ADF&G had reviewed the draft Resource Assessment Report and had provided comments to DNR explaining that there were several areas where the information was incomplete and needed considerable additions. I also stated that the Subsistence Division had reviewed the PBIF and had identified several areas in the Resource Assessment Report where information was lacking or incomplete. I explained that these comments were recently provided to Habitat Division (April 3 memo to Kim Sundberg) who would incorporate them into the Department's final PBIF comments to DNR.

I explained that ADF&G was concerned with mining in areas outside of Goodnews Bay and that ADF&G would make detailed recommendations to DNR about deleting tracts and permit stipulations. I said that: we could not be sure what (if any) the impacts would be; ADF&G is sensitive to the concerns of local people; the potential for impacts is real; there is information known by the local residents that has not been incorporated into the information provided to DNR, and that there remains to be some uncertainties. At this time I could not say specifically what ADF&G's statement to DNR would contain.

David Case asked me if there was any information describing subsistence uses outside of Goodnews Bay, which I was aware of, that had not been incorporated into the latest Resource Assessment Report. I briefly described the mapped information which the Subsistence Division had obtained in 1983 from Platinum residents and that this information included subsistence use areas for marine mammals, waterfowl, marine fish and salmon. I explained that we were concerned that this information was not in the Resource Assessment and that ADF&G would raise this issue in our comments to DNR.

Here are the comments from the public:

Wassillie Roberts

Pointed out that the maps resource use area maps are inaccurate. He wondered why the marine mammal haul out areas inside of Goodnews Bay are not shown on the maps.

Bavilla Merrit

The maps are incorrect, everyone of them.

David Walters

Where did the information on these maps come from anyway? (answer from DNR, it came from consultants who were here last summer, also some of it came from ADF&G).

Bavilla Merrit

Bavilla showed an example of where the maps were incorrect: The area where tomcod fishing is supposed to occur is all mudflat. The salmon fishing area inside of the Bay shows almost all of the Bay. In fact, there is only a small channel in the Bay where salmon fishing occurs.

Christian Small

These maps are wrong. Since the maps are wrong, the information is wrong. This proposal process should not be continued.

Jessie Beaver

Maps are wrong. If oil or fuel is leaking from drilling activities or from the dredge itself, it is going to mess up our fishing. (Raising his voice to shouting) We don't want to hear any more about this, we have rejected this already (referring to several earlier meetings at Goodnews Bay where this offshore mining was discussed).

Charlie Chingliak

Maps are incorrect and they are also difficult for us to understand and follow.

Bavilla Merrit

Stated concerns about heavy metals. Mercury ---> poisoning-----> animals-----> people. (Raising his voice), We have told you NO before but you keep asking us.

John James

In the old days we had no motors but instead we used dog teams. If there is drilling inside of the Bay, oil will seep out. Several years there was some drilling in the Bay and we later found some dead fish. White people have not helped us. The maps are not accurate. We want no offshore mining.

Vernon Bavilla

Vernon made an oral presentation of a written statement to DNR on behalf of Kuitsarak Incorporated. In summary, he said that this proposal to mining risks: their income from commercial fishing, income from recreational fishing and the value of the resources contributing to the subsistence of area residents. He questioned the timelines that DNR are following. He pointed out that there is a statement in the PBIF that the proposal will not go forward if there is not adequate funding available to address concerns. He further pointed out that the PBIF later states there is not adequate funding (?).

Concerns over mercury and fuel and spills risks to the resources and public health .

The maps are incorrect. Marine mammal haul-outs within Goodnews Bay are not shown.

The DNR PBIF is inconsistent with the CZM plan and the Bristol Bay plan.

The proposal risks everything that Goodnews Bay people value. The proposal is not in the State's best interest.

Moses Toniak

Who made these maps? Maps are inaccurate where tomcod and whitefish are shown. Concerning the marine mammal haul out areas, I have not seen any seals haul out in these areas because these areas are very close to where boats always travel.

Louis Smith

Maps are incorrect. I am opposed to any offshore mining. If someone asks me where I go to hunt and fish, I will not cooperate. Everyone here, men, women.. everyone, have said that they do not want mining. Mr Smith said that he found some dead smelt and silvers salmon a few years ago which was caused by the drilling activities there. He supports Vernon Bavilla's testimony. People living in other areas have also told him that they support the position of Goodnews Bay.

Elsie Ross

Ms. Ross pointed out that there are not enough jobs in the community and that this proposed mining could provide more jobs. She works a full time job and feels that, during the winter, some people make her life difficult because they think that she is rich because she works..... that they dislike her because she has one of the few jobs in the community. She feels that if people were working they would be happier and things would be better in the community.

William Walters ("crooked man")

Concerned about heavy metals such as arsenic. He referenced a publication (University of Alaska Magazine -- Winter 1984(?)) describing the effects of arsenic on fish, including skin diseases and bacterial infection.

Referring to the large maps, which illustrated the subsistence and commercial resource use areas in color, he said, "Eskimo have no color", making the point that people harvest in areas where they find the resources, not only in the areas indicated by the maps. He was also concerned that mining would affect eelgrass and herring inside of the Bay.

James Smith

Weather and other factors affect the distribution of resources and we have to move around to harvest fish and game. You can't put these areas on a map. If commercial fishing is lost, we will lose the economy of this community. Subsistence is our food, if it is lost, who is going to feed our people?

He then provided the following resolutions and comments in support of the position of Goodnews Bay residents:

Resolution by RARA, 89-05

Resolution by CZMP, 89-02-01

Resolution by Akiachak Native Community 89-03-02  
Resolution by Quinhagak Native Community  
Letter from Rep. Al Adams, Kotzebue  
Statement by Rep. Lyman Hoffman, Bethel  
Resolution by Goodnews Bay Trad. Council, 89- -01

David Walters

State of Alaska agencies need to understand that there needs to be cooperation between people here and the State. This can't be done overnight.....we can't become White. The State and the community must get together to resolve the differences before this proposal goes any further.

Martha Galila

We don't want mining here. She mentioned the oil spill in Prince William Sound, dead sea otters and marine mammals.

Joe Beaver

He was born in 1909 in Quinhagak and moved to Goodnews Bay in 1921. He doesn't like the maps he sees and he doesn't want any offshore mining.

He does not want to hear any more talk about this offshore mining any more in Goodnews Bay. He wants no more meetings to talk about it. They have already said "NO". He thought that ANCSA said something about not bothering Native people. Still everybody is trying to regulate them. All of these things are destroying the Yup'ik way of life and, even though he is old, he must fight it.

Louis Smith

Mr. Smith asked DNR if the consultants that made the maps had the names of the Goodnews Bay people that provided them the information used on the maps. DNR felt that the consultants had the names of the people they interviewed. Mr. Smith added that the maps were untrue and they were useless for people of Goodnews Bay, although they may be useful to White people.

Christian Small

At this meeting, you have heard good information from Goodnews Bay people. He expressed hope that DNR would allow the resources and lives of residents to continue.

William Walters

In 1983 or 1984 Ron Hyde got permission to put his camp on Kuitsarak Inc. land (Hyde operates a sport fishing operation on a site leased from DOT atop a traditional use site and cemetery near the mouth of Goodnews River near the airport). First he came to the people of Goodnews Bay and asked us for permission; we said "no". He went to the State of Alaska and they told him "yes". The money from this

lease did not go to help our people but went to the State of Alaska. Why didn't the State of Alaska ask our people first before leasing our land to Hyde ?

Wassillie Roberts

After 1991 the government will take over the land. When that happens the people of Goodnews Bay will lose some of their power to influence decisions affecting the land. The Goodnews Bay people still have a chance to develop a fishing group that could lobby for the interests of Goodnews Bay residents. At the present time it appears that many people think that the Goodnews Bay area is open for anybody to do anything they want, including this mining. We have a chance to do something (implying that if there was a local fishermen's organization, it would strengthen the communitiy's position that the area is being used and that local residents are currently active in matters affecting their resources and livelihood).

Bavilla Merrit

We are not playing games. We do not want this operation inside or outside of Goodnews Bay area. We are not only protecting the fish but also the ducks, marine mammals and the clean water. We want this area to stay as it is now and we do not want the water to look like it does in other areas (dirty). If our fish remain clean and unspoiled we would also be helping people in foreign lands who buy our fish. Our fish are also food for hungry people in other parts of the world so lets keep Goodnews Bay area clean.

Maggi Sholtz

If the water is polluted a large land area will also be impacted. During times of high tide, much of the surrounding low land area, even tose areas far from the shore, get flooded. Some of our berries and plants, that we depend on, will be contaminated.

John James

Maps are inaccurate information. Will these inaccurate maps be used to make the final decision ? (DNR answered that all of the information, including the public testimony, will be used). Mr. James continued by saying that the offshore areas outside of Goodnews Bay are also important to other residents of the YK delta because of resources migrating through the area.

Joe Beaver

If there was an oil or fuel spill, a very large area including the Yukon and Kuskokwim rivers would be affected.

Jessie Beaver

Wants DNR people at meeting to tell "boss" that the message regarding any offshore mining in the area is "NO".

He said that he wants the position of the Goodnews Bay people to be made clear to those who DNR will report back to. He also wants the position of the Goodnews Bay people to be broadcast on TV, radio and in the papers.

Martha Galila

Asked for a show of hands of all people who are opposed to mining as proposed in DNR's PBIF. All hands were raised.

Before the meeting ended Anna Phillips (CZM) suggested to DNR that the proposed lease be postponed for 10 or 20 years. Someone in the audience stated that 10 or 20 years is not a very long time.

DEPARTMENT OF FISH AND GAME

DIVISION OF HABITAT

BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-4106

March 21, 1989

Ms. Anna Phillip  
Coordinator  
Cenaliulriit  
P.O. Box 1169  
Bethel, AK 99559

Dear Ms. *Anna* Phillip:

Thank you for the Resolution of the Cenaliulriit Board of Directors concerning the proposal by the Alaska Department of Natural Resources (ADNR) to open portions of Goodnews Bay and the adjacent offshore waters to mineral exploration and possible offshore mining.

The Department of Fish and Game (ADF&G) has carefully studied the ADNR, Division of Mining (DOM) proposal and the associated Resource Assessment Report. In addition, we have conducted a review of our own fish and wildlife resource and human use data for the area, and we have reviewed published and unpublished information concerning the potential impacts of offshore mineral exploration and seabed mining on fish and wildlife and human uses.

Our studies have shown that: 1) there are intensive fish and wildlife and human uses of portions of the project area, 2) it is very important to maintain productive marine habitats to support these uses, 3) there are potential impacts of seabed mining on important benthic habitats and water quality, and 4) there is a significant likelihood that the mitigation measures necessary to protect fish and wildlife resources, habitats, and human uses could not be fully complied with within Goodnews Bay.


The department concurs with the Cenaliulriit Board of Directors that Goodnews Bay should not be opened for offshore prospecting permits or mineral leasing at this time. The department has similar concerns for Chagvan Bay. However, you may be aware that Chagvan Bay is a State Game Refuge that is not within DOM's current project area. Moreover, offshore mineral exploration or mining cannot occur there without the concurrence of the ADF&G.

March 21, 1989

Although we have concerns about the potential impacts of mineral exploration and mining for the remainder of the project area, offshore of Goodnews Bay, we believe that these impacts can be mitigated if the DOM and other applicable regulatory agencies (i.e., the Department of Environmental Conservation and the Environmental Protection Agency) enforce measures that require the operator, among other things, to meet state water quality standards, to conduct biological monitoring, and to restore the seabed to a condition that will allow for productive regrowth of marine life.

The department intends to provide detailed recommendations to DOM concerning tract deletions and permit stipulations in our response to the Preliminary Best Interests Finding and Proposed Coastal Consistency Determination. We will provide Cenaliulriit with a copy of our response. Thank you for sharing your comments with us.

Sincerely,

  
Frank Rue  
Director  
Habitat Division

cc: Norman A. Cohen  
Jerry Gallagher



# Cenaliulriit

Coastal  
Management  
District

For the Yukon-Kuskokwim Coastal Resource Service Area  
P.O. Box 1169 • Bethel, Alaska 99559 • 907/543-2243

February 7, 1990

Cliff Davidson, Co-Chairman  
House Resources Committee  
P.O. Box V  
Juneau, Alaska 99811

Re: House Bill 332 "An Act establishing the Goodnews Bay Critical Habitat Area, and providing for an effective date".

Representative Davidson:

First of all I would like to remind the respected members of the House Resources Committee, Cenaliulriit Coastal Management Program was Federally approved in 1985 and has authority under Alaska Statutes 46.40.110. We represent over 40 villages and 48,000 square miles of the Yukon-Kuskokwim delta.

1) The 56 villages of the Association of Village Council Presidents (AVCP) fully support the opposition of the Offshore Prospecting Permit, and passed a resolution during the AVCP Annual Convention at the village of Kalskag in October 1989.

2) House Bill 332 reaffirms Cenaliulriit Coastal Management District's (CCMD) position to establish the Goodnews Bay Critical Habitat Area. The area is "essential" for fish and wildlife habitats sensitive to major development. The area is also important for subsistence and commercial harvests. Recreational activities also occur within the vicinity of Goodnews Bay.

3) There may be a significant public need for the proposed use or activity in the Offshore Prospecting Permit, but I remind the members that there are other sources available onshore.

4) The meteorological and oceanographic conditions of Bering Sea is adversely unpredictable, and there is no current technology available to ensure long term protection of the fragile ecosystem and impacts to all our concerns versus a short term project which will benefit a few.

Representative Co-Chairman Davidson Page Two February 7, 1990

5) CCMD has determined the project or activity to a proposed Offshore Prospecting Permit and the Department of Natural Resource's leasing intent inconsistent with CCMD's policies and the requirements under the Alaska Coastal Management Program. Because land and water resources are so interdependent, protection of the entire ecosystem is essential.

#### SPECIES OF CONCERN

The species of concern are herring fish, presently threatened by domestic and foreign interference. Sea lions which have been declining over the years is also threatened. Elders of that area also stress tideflats and wetlands are used as staging areas and as feeding grounds at low tides by the migratory waterfowl. Three species of waterfowl are already threatened, and one is endangered.

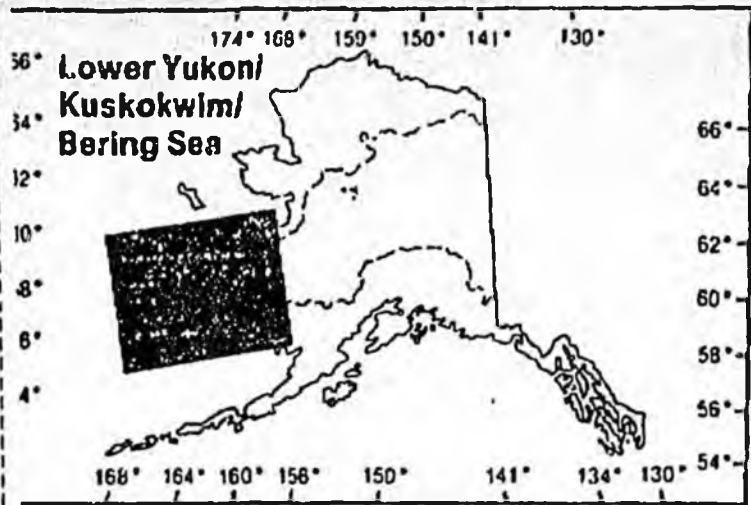
The western two-thirds of the of the Bay were designated critical habitat for capelin and herring spawning. (See illustration, dark lines, Cape Newenham to Goodnews Bay.) Food sources and natural habitats and spawning areas are threatened.

The area of interest for prospecting directly block and interfere with the migratory route of the anadromous fish species of salmon, which return to spawn in the watershed areas of Goodnews Bay. This interference will undoubtedly disrupt and impact the already threatened species.

All species mentioned above depend heavily on the areas natural balance.

#### ENDANGERED SPECIES

An endangered species of concern is the gray whale already known to feed on herring during their spring migration through the affected area.



Definitions for map categories can be found in the Alaska Habitat Management Guide, Western and Interior Regions Map 5.

For more detailed information, such as cases where data are too small to portray at this scale, see the Alaska Habitat Management Guide Reference Maps, Western and Interior Regions.

SCALE 1:1,000,000

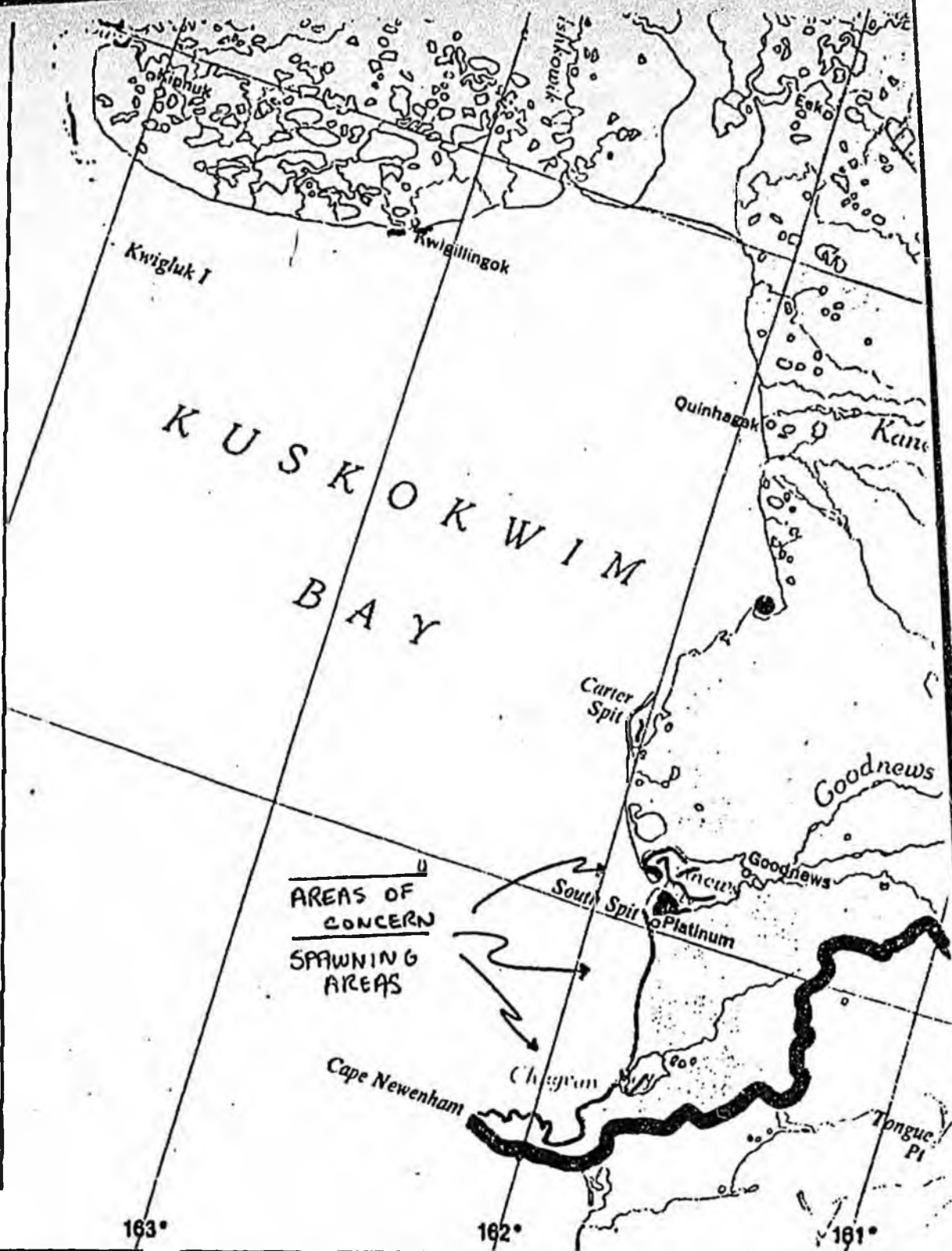
0 10 20 30 40 50 Miles

10 0 10 20 30 40 50 Kilometers

ALBERS EQUAL AREA PROJECTION



STATE OF ALASKA  
DEPARTMENT OF FISH AND GAME  
HABITAT DIVISION  
1986



Representative Co-Chairman Davidson Page Three February 7, 1990

SUBSISTENCE, COMMERCIAL AND SPORT FISHING

Goodnews Bay River, its middle fork and south forks, small creeks, sloughs and rivers, including ponds, lakes and the bay itself are all interdependent; just as subsistence, commercial and sport fishing in those areas are all threatened.

RESOURCE ASSESSMENT REPORT

We must note the Resource Assessment Report (RAR) is to be rewritten due to the "conflict of interest" on the part of a chief consultant who prepared the report also having financial interest in the Offshore Prospecting Permit, creating questions to the integrity of the report. The Alaska Coastal Policy Council met on January 30, 1990 and recommended that the Resource Assessment Report be rewritten.

DISTURBANCE OF OCEAN FLOOR

The RAR acknowledges that "...inside the Bay, turbidity would increase and depending where the spoils were deposited part of the Bay may be covered with a layer of sediments. If this were to cause destruction of eelgrass beds, a decline in the commercial herring fishery would probably result." The RAR also recognizes that Goodnews Bay is naturally turbid and that some areas may be at the limit of acceptable turbidity for survival of eelgrass, which is essential habitat for herring spawning.

INTERFERENCE WITH CURRENTS AND CIRCULATION

According to the RAR, "...dredging... will cause sediments to swell, thereby creating islands or areas of shallower water and somewhat restrict local navigation."

Such heavily silted process water will undoubtedly affect the environment into which it is discharged. The effects of depth and

channel changes will be caused by removal of material from the floor of the ocean, including changes in fish migration and changes in circulation and flow that will affect habitat quality.

#### NATURAL CURRENTS

Kuitsar, Inc. provided an illustration identifying natural currents inside and outside Goodnews Bay. <sup>CHARLIE KAVELELA</sup> ~~MISSISSIPPI STATE UNIVERSITY~~, 75, a long time resident of Goodnews Bay was a valuable source. He travelled extensively between the Kuskokwim Bay, Bristol Bay and Goodnews Bay as a fisherman and has extensive knowledge from on-site observations over the years.

Currents flow into the Goodnews Bay estuary from the area of the Proposed Offshore Mining. The inflow and outflow of increased turbidity flowing in from the proposed area will create a double dosage of constant destruction. (See illustration).

#### ENTRAINMENT

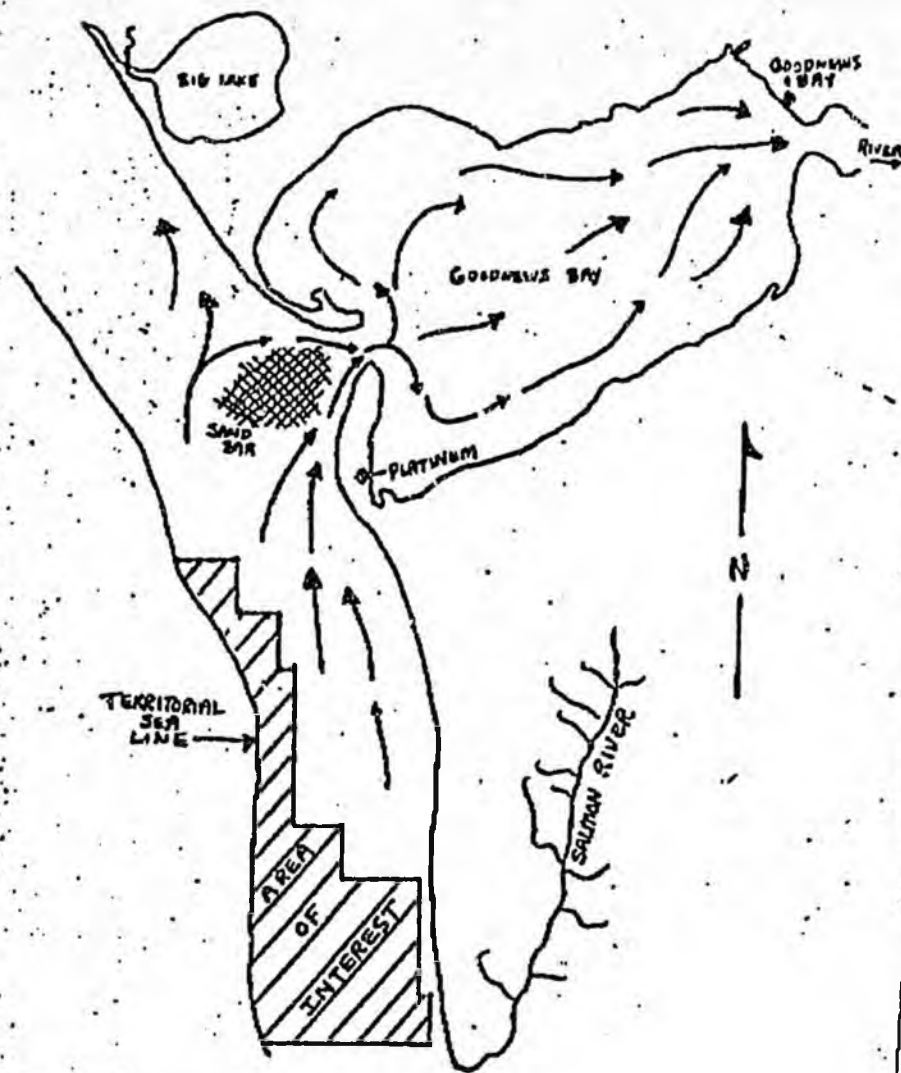
Even if entrainment of larger fish can be prevented, there will be a problem with destruction of smaller fish and pelagic organisms, with predictably adverse effects on subsistence and commercial fishing.

#### NOISE AND OTHER DISTURBANCE

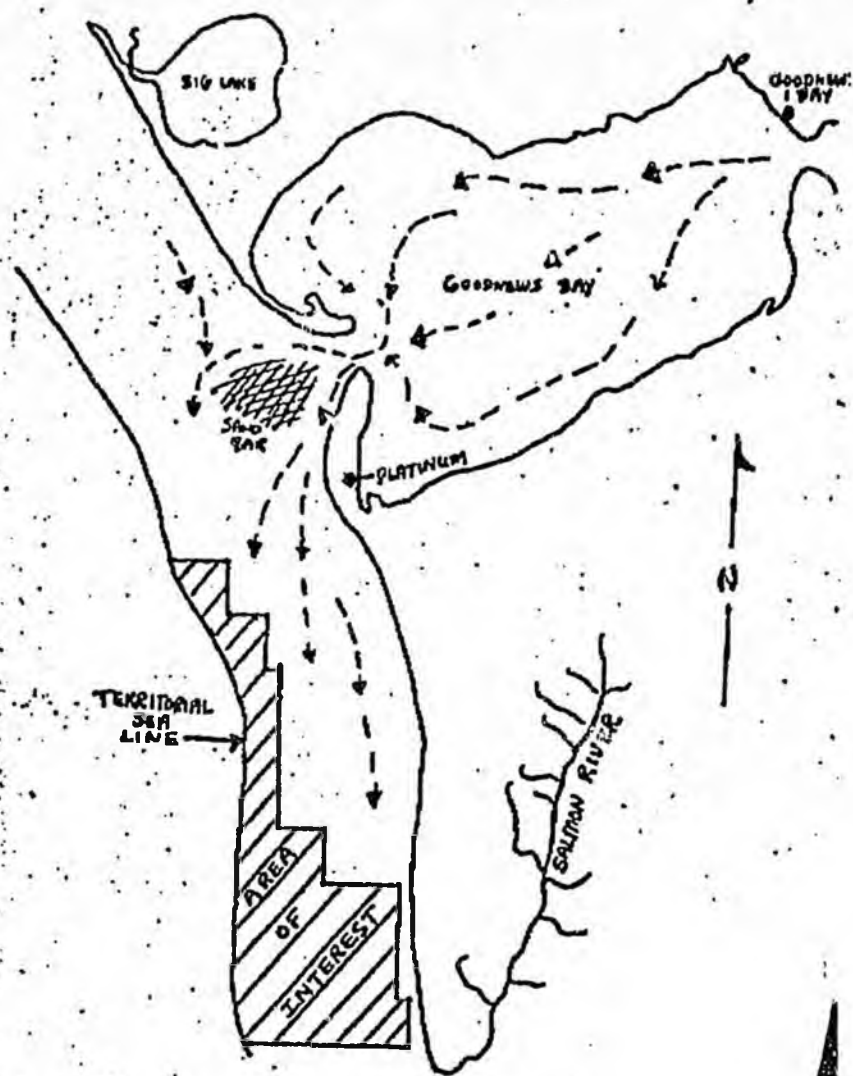
Noise, dredging, human presence, boat and aircraft activity will dramatically increase impacts to fish and wildlife in the migration routes and habitat areas.

#### HAULOUTS

The RAR indicates that sea mammals are present and haul out year round, near the North and South spits.



INCURSION  
(RIP TIDE)



EXCURSION  
(EBB TIDE)

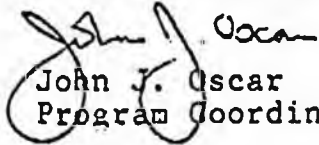
MERCURY LEVELS

According to the federal Environmental Impact Statement on Norton Sound, "...mercury exists naturally in the Bering Sea." I may cite literature found by Kim Sundberg, Habitat Biologist of ADF&G, "It should be noted that persons who consume large amounts of seafood, including residents of Western Alaska have been found to contain high levels of mercury...Marine mammals in the Bering Sea such as seals have also been found to contain significant amounts of mercury." Such findings do show the seriousness of our concern for human health.

In conclusion, we strongly urge the House Resources Committee to support House Bill 332, to prevent a very destructive chain reaction. Our program requests to situate the proposed new development where it will not harm the resources or further frustrate the management efforts of fish and wildlife agencies. Productivity could be damaged by poorly conceived development. The ability of fish and wildlife suddenly to adjust to environmental changes is limited. The pollutants common to modern industrial society are not compatible with fragile arctic habitats. Nearly a quarter of a million gallons of intermediate fuel oil and deisel fuel oil was spilled recently at St. Matthew Island, even the normal wastes from the villages, as they presently exist, are harmful. Support House Bill 332.

Qu'yana, for your time.

CENALIULRIIT COASTAL MANAGEMENT DISTRICT  
Paul Chimiugak, Chairman

  
John J. Oscar  
Program Coordinator

cc: Distribution

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## Testimony to House Resource Committee on HB 332

February 6, 1990

Mr Chairman and members of the committee. My name is Greg Roczicka and I represent Nunam Kitlutsisti, a non-profit organization which addresses natural resource issues affecting the 56 villages in the Y-K Delta region. Thank you for the opportunity to provide further input into this very important piece of legislation.

I observed four major points of contention brought out during last week's hearing...

1. that this bill represented bad policy by precluding further development in the area of interest without giving developers a fair chance at the resource;
2. that prevention of mining in the designated area was a threat to national security due to platinum's status as a strategic mineral;
3. that concerned entities of the Y-K region did not understand the developers plan well enough to present a realistic opinion;
- and 4. the environmental concerns surrounding the maintenance of a highly productive ecosystem which already supports healthy and heavily integrated use patterns by man and nature alike.

The first three contentions are completely unfounded and a sad misrepresentation of the true situation, and the fourth presents a whole host of issues within itself.

First, this bill does not represent bad policy. It is a very appropriate response measure which addresses very legitimate environmental and socio-economic concerns that would otherwise be overridden by devoted interests which are dedicated to

monetary gain regardless of the consequences. The complete shut-down of mining activities within the area which was repeatedly alluded to simply will not occur. Still available and not affected by the bill are onshore/upland areas with equally high or greater (and proven) potential for economically recoverable deposits.

To add to this point - upon review of the November 1988 study by the USGS of this offshore area on platinum potential (A Review Of Favorable Offshore And Coastal Depositional Sites For Platinum Group Metals In The Goodnews Bay Mining District, Alaska) we find in its Conclusions and Recommendations the following remarks; "Given the approx. size of the various potential deposits around Goodnews Bay sample spacing is probably sufficient to determine if economically mineable grades and volumes are present" and further, "The USGS has estimated the hypothetical resources of subeconomic grade (emph. added) to be 155,500kg from offshore placers." and that "beach and offshore sampling results suggest this value to be very optimistic."

National security is not threatened by protection of this one small block where mining potential exists. The market, price, and availability of platinum has remained stable over the years from worldwide sources (enjoying specific exclusion in South Africa economic sanctions) and shows no indication of changing in the near or late future. The "national interest" issue is merely a sensationalist ploy by industry to advocate their desire to fully exploit all available possibilities and play upon your sensibilities.

When and if the Goodnews Bay area actually achieves a status of "national concern", then at the very least we may perceive this legislation as holding the area in trust as insurance against future needs. (If indeed recoverable deposits exist within.)

Additionally efforts are currently underway in other areas of the state to identify less controversial sites with potential for exploration and exploitation. Initial review by the USGS has already identified several areas which show considerable promise, throughout the Kuskokwim Mtns. geological corridor. It is known as well that onshore/upland mining is a much safer, simpler, and more lucrative means of obtaining the resource.

Regarding the suggestive statements that proponents of this bill from the Y-K region do not understand the true impact of the proposed activity is perhaps the most ridiculous allegation of all. They understand only too well, and quite frankly it scares the hell out of them.

They understand very well that the resource assessment on which the PBIF was based, was bought and paid for by the mining interests directly involved in the proposed development, and the resulting bias is obviously reflected by the document's narrative & conclusions.

They understand very well that this assessment did not include subsistence use data provided to them by ADF&G habitat division. They understand very well that because mining would have to occur during ice free months that seasonal restrictions in the area are not practical. They understand very well that proposed restrictions cannot effectively mitigate the potential negative impacts

of mining on marine habitat within the area. They understand quite well that the proposed activity severely threatens the survival of the Goodnews Bay eco-system inclusive of all the human and marine populations who depend upon it.

I remind you that once the eel grass, benthic populations, or bottom life is depleted through suffocation or lack of sunlight due to increased sedimentation and/or turbidity of the habitat area as a result of mining activity regardless of well-intended mitigation efforts, that also gone will be the herring which are already in trouble from irresponsible harvest activity by ocean and domestic fleets; the crab & halibut larvae which nurture there; and the waterfowl which depend upon it as a restorative/feeding area during migration, to name only a few of the more sensitive species which currently abound in the affected area.

Much was said as well that attempts to prevent the issuance and working of the OPP's are too extreme as the current attempt is only to "prospect". This is a blatantly misleading statement as anyone with experience in the industry or beauracracy knows that in practical application exploration and development are one and the same should a chance for profit exist. To quote Mr. Gallagher (Director of the State Division of Mining) from the Feb. 4 issue of the Anchorage Times, "Ms. Sheardown would automatically receive a lease from the state if a workable mineral deposit were found."

We do not oppose responsible or necessary development. However the proposed mining of the Goodnews Bay area does not qualify in

either category. The technology simply does not currently exist to safely carry out this type of offshore mining in a safe and practical manner. We are asking that you do not jeopardize this highly productive and sensitive area by giving mining interests a green light to go ahead and experiment with their technology in and around Goodnews Bay. In all responsible fairness and justification, these techniques should be developed somewhere that is not of such critical concern in creating such potentially devastating impacts to the renewable resources and peoples affected by the proposed action.

Gentlemen you cannot in good conscience thwart this bill from going forward. To do so would be to bow to totally speculative interests and sensationalized rhetoric. I cannot believe that any of you would be on this committee if you were that gullible or insensitive to the issues at hand.

Development of offshore mining is neither necessary or desirable in the Goodnews Bay area, and creates a myriad of conflicts against the state's best interests. It pits short term monetary gain for avaricious interests and endangerment of a fully utilized eco-system, over the long-term maintenance, use and protection of the area. Alaska needs diversification and stimulation of its economy to some extent, but not at the expense of a highly productive area such as Goodnews Bay represents. And especially not when economically viable options and alternatives exist to accomodate developmental and industrial interests. We urge that you move this legislation along its proper course with your full support and recommendation for a Do Pass status. Thank you.

*Bob*  
FEB 16 1990

Organized Village of Kwethluk  
Kwethluk IRA Council  
P. O. Box 84  
Kwethluk, Alaska 99621-0084  
(907) 757-6714

Resolution 90-02-02 - In Support of Senate Bill 313 and House Bill 332 Relating  
to Goodnews Bay Critical Habitat Area

WHEREAS, The Kwethluk IRA Council has a major concern about the subsistence of the Yup'ik People of the Yukon/Kuskokwim Delta Area, including the Goodnews Bay Area; and

WHEREAS, The Kwethluk IRA Council has an understanding that certain bills have been introduced to both the Senate and House of Representatives in the Alaska State Legislature for the establishment of the Goodnews Bay Area making it "A Critical Habitat Area"; and

WHEREAS, The Kwethluk IRA Council supports the passage of these two certain bills addressing the immediate concerns of the Goodnews Bay and Platinum villages including but not limited to the Yukon/Kuskokwim Delta Area; and

WHEREAS, The Kwethluk IRA Council feels the establishment to protect and maintain fish and wildlife habitat and populations and aquatic plant resources, especially eelgrass beds, and to ensure the continued productivity of the area's fisheries and fish and wildlife harvests are more important than any attempts by the state and the mining companies to come into pristine environment for purposes of offshore dredging; and

THEREFORE BE IT RESOLVED, That the Alaska State Legislature pass and approve the passage of these two bills so the Goodnews Bay Critical Habitat Area would be established furthering the protection of the Goodnews Bay Area.

BE IT FURTHER RESOLVED THAT, The copies of this resolution be forwarded to the villages of Goodnews Bay and Platinum, Senator John Binkley, Representative Lyman Hoffman, appropriate Senate and House committees, and the Governor of the State of Alaska.

ATTEST:

*Magdalena E. McDalton*  
Magdalena McDalton, Secretary/Treasurer

*Joseph Guy*  
Joseph Guy, IRA Council President

*Max Angellan*  
Max Angellan, Tribal Administrator

*Moses Nicolai*  
Moses Nicolai, Vice-Chairman

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P.2/9

*FINAL*

TESTIMONY OF TONY SMITH  
January 30, 1990  
Before the House Resources Committee  
HB 332, SB 318  
Goodnews Bay Offshore Platinum Deposit

I am Tony Smith, a partner in Davis Wright Tremaine. I am representing Goodnews Resources, Inc. Goodnews Resources, Inc. is an Alaska corporation involved in the exploration and hopeful development of platinum prospects in and around Goodnews Bay and Platinum, Alaska. I appear before you today to urge you to reject HB 332.

Title 38 sets up a statutory and regulatory process for the exploration and development of resources in the State of Alaska. It is a balancing of various interests, ensuring input from all parties so that the best interest of the state can be realized. The Department of Natural Resources (DNR) is required to conduct their analyses and decision-making on the basis of that input. This procedure is working as designed. There has been extensive analyses and comment by Alaska Department of Fish & Game (ADF&G), the Department of Environmental Conservation (DEC) as well as local groups, industry groups and others.

The issue presented by this Bill is whether the legislature will politically overturn the statutory process and scientific and technical evaluations. The result will prevent the exploration and development of America's only viable platinum prospects.

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GENERAL BACKGROUND.

The area in question, including the Salmon River platinum deposit, is one of only two platinum prospects in the United States. Platinum is a strategic metal which presently the United States imports from other countries. The major importation is from the Republic of South Africa. It should be noted that platinum is exempted from sanctions.

The platinum resource in Goodnews Bay and Platinum, Alaska, has been mined since 1935. In excess of 500,000 ounces of platinum has been taken from this geological formation since 1935. The U. S. Bureau of Mines identifies the areas in question as one of two highly prospective platinum deposit in the United States.

Platinum is a required ingredient in automotive catalytic converters. Each catalytic converter requires 1/20 of an ounce of platinum in order for it work. Thus, you need an ounce of platinum for each twenty cars manufactured in the United States.

The acceleration of world demand for platinum resulted from the Clean Air Act which turned platinum from a precious metal into an industrial metal. Thus a vote to shut down America's platinum prospect is hardly an environmental vote. The contrary is the case.

According to the latest Bureau of Mines Yearbook, the United States imported 3.8 million ounces of platinum in 1987. Approximately 1.8 million ounces was imported from the Republic of

Testimony of Tony Smith  
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South Africa. Approximately 400,000 ounces was imported from the U. S. S. R., and 500,000 from the United Kingdom. The balance came from Canada, Australia and some other countries. In imposing sanctions on the Republic of South Africa, Congress recognized that our air pollution effort required their platinum. Platinum was exempted from the sanctions. Once again this simple bill creates some interesting moral dilemmas.

The prospects are offshore. Thus the mining would be by dredging. This is the same process used by the "Bima" offshore at Nome. More important, dredging for platinum or gold is not any different than dredging the entrance of the Dillingham, Kodiak, Nome or Anchorage harbors. We are dredging all over the state to aid navigation, and the risks are the same.

Another issue raised has been whether dredging creates risks of high levels of mercury contamination. Recent study results developed by the Mineral Management Service (MMS), Norton Sound Health Corporation and the Indian Health Service (IHS) demonstrate that any perceived threat of mercury contamination from dredging and offshore mining is not there. You should note that it's the dredging, not the mining, which creates the perceived risk. Fortunately, that risk is not there.

The experience in the state with offshore mining has been excellent. In Nome the dredging operation has produced a number of seasonal and year-round jobs. In addition, the constant

Testimony of Tony Smith  
House Resources Committee  
January 30, 1990  
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monitoring has allowed the state to understand and document any adverse effects. On balance the risks are minimal when compared to the economic benefits to the local, regional and state economies. In our situation we have the nation's only viable prospect for a strategic mineral.

PROCEDURAL BACKGROUND.

In 1970 an offshore mining lease was issued in Goodnews Bay for the platinum prospects. In 1976 that lease lapsed. In 1982 22 "offshore prospecting permit applications" were filed for Goodnews Bay and adjacent seas for platinum prospects. The total acreage involved is 52,878 acres.

Commencing in 1982 to date the various departments and agencies began to process the applications, with DNR as the lead agency. In 1989 this process reached a point where DNR was ready to go forward with a Best-Interest Finding. The result was the publishing of the draft BIF in accordance with the statutes.

It is more appropriate that the Department of Natural Resources, as lead agency, detail the long involved process which has transpired in this particular case. Suffice to say that there have been meetings, comments from all affected agencies and departments, hearings in the affected communities, and ultimately a draft Best-Interest Finding. The Alaska Department of Fish & Game, the U. S. Bureau of Mines, the respective Coastal Zone Districts, and all affected groups have had an opportunity to

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appear, comment, and participate in the process. It is now time for the issuance of a final Best-Interest Finding which will govern how we proceed.

Of major significance we believe has been the actions of Goodnews Resources, Inc. Attached to my statement is a letter sent by Goodnews Resources, Inc. to the people of Goodnews Bay and Platinum. The response from the supporters of HB 332's attorney was that they were not interested in any discussions, input or positive involvement whatsoever. They were opposed to any exploration or development whatsoever, irrespective of the science, the environmental safeguards or the benefits to the locality, the region, the state or the nation.

In analyzing the facts it should be noted that while there has been opposition in the public hearings, this is not unique in similar situations. In 1984 there was near unanimous opposition to the development of the coal prospect at Wishbone Hill in the Mat Valley. Now the sentiment is quite different. The same is true of many other instances in Alaska. That is why public testimony is only one input.

It appears that the goal of the bill is not the development of Alaska's resources with full knowledge and sensitivity to the environment. Instead, it appears that we are looking at a political effort to shut down forever one of America's only deposit of this strategic mineral.

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THE INDUSTRY.

Alaska's mineral industry should be one of our principal economic sectors. The resources are here. In addition, there is enough known about Alaska's hardrock and precious metal reserves so that there should be a healthy mineral industry.

The problem has been that politically Alaska has discouraged investment in the development of our mineral industry. This is an international industry with a strong international network. When I was Commissioner of Commerce and Economic Development we found the executive offices and board rooms of our mineral companies looked at Alaska as a location of great potential, but with a political climate which dictated against investment. Since 1986 there has been a directed effort to remedy that, and the result has been a great deal of investment and development.

The proposed action before this Committee of creating a Critical Habitat overlay in the area of Goodnews Bay would be a strong signal that Alaska is opposed to the mineral industry for political rather than scientific reasons.

In 1986 Alaska was 46 out of the 50 states in mineral production. Across the board companies were choosing to not invest in Alaska. That's changed, but the enactment of this statute would send a strong signal to the mining industry that the pendulum is swinging back to opposition on political rather than environmental grounds.

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Let's look at the benefits to the state of a decent investment climate. In 1986 total exploration, development and production amounted to \$231,712,979. Only \$8.9 million of that was in exploration. There had been a steady decline in exploration expenditures in Alaska starting in 1979.

By 1988 total exploration, development and production in the state had increased to \$552,586,200. Importantly, exploration expenditures are up to \$45 million, and the steady downward trend over the last ten years has been reversed.

Mineral industry employment has increased substantially since 1986. In 1988 the mineral industry employed 4353 people, an increase of 32% over 1987. These jobs are high-paying, year-round jobs. For example, Green's Creek Mine has employed every graduate of the University of Alaska's Mine Training Program, and the salaries average from \$40 to \$50 thousand a year. If current prospects come on line, the mineral industry is rapidly becoming one of the major industries in the State of Alaska.

This Committee should take pride in the fact that over the last three years the mineral industry has been able to prosper while meeting the tough environmental requirements of our state regulations and statutes.

I submit that a political decision to mothball the United States' platinum prospect, contrary to the scientific and technical facts, will have a major impact on long-term investment in the

Testimony of Tony Smith  
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mineral industry in Alaska. At a time when we finally have overcome the attitude that Alaska doesn't want mineral development, a decision to pass this bill will be a clear signal that Alaska is still a poor political risk.

CONCLUSION.

The Department of Natural Resources and Goodnews Resources, Inc. have done everything in accordance with the regulations and statutes. The data demonstrates that this prospect should be allowed to go forward in the normal course. The evidence does not support a political decision to terminate exploration and development of the subject offshore prospect permits.

A vote in favor of HB 332 is a statement of the Legislature that we don't want a mineral industry in the State of Alaska for political, rather than environmental or technical reasons. That's bad public policy. In addition, that ensures that we will not be able to diversify our economy.

As much of the investment in the mineral industry is international capital, it also sends a strong signal to the international financial market that Alaska is a bad place to do business.

I would be glad to answer any questions.

JAS/28201\1\Testimony

Testimony of Tony Smith  
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**PHIL R. HOLDSWORTH, P.E.**CONSULTING ENGINEER & LEGISLATIVE COUNSEL  
MINING — GEOLOGY — LANDS

PHONE 907.886.1383

328 FOURTH STREET, NO 1009  
JUNEAU, ALASKA 99801

January 30, 1990

Comments on SSHB 332 and SB 318  
 "An Act establishing the Goodnews Bay Critical Habitat Area;  
 and providing for an effective date."

The following comments are presented on behalf of the Alaska Miners Association. The Goodnews Bay Mining District has provided the only platinum produced in the United States, beginning in 1916 with the annual production increasing to 37,000 ounces in a six-month's operation in 1938 - from a single operator. Production continued until 1975, and all production was from uplands.

Platinum is a critical/strategic metal and 93% of the nation's requirements are imported - from South Africa, the United Kingdom, and Russia. Renewed production from Alaska would certainly reduce the present imbalance of payments in international trade. The U.S. Bureau of Mines and the U.S. Geological Survey have conducted extensive surveys in this mining district in recent years indicating potential reserves, and have published their findings. These reserves are indicated both on-shore and off-shore lands. Renewed interest has been shown by the mining industry in this mining district.

An example of present-day mining technology practiced by the industry is best described by the Bima dredging operation of Westgold off-shore of Nome. Production has been on-going for the past three seasons and has had no adverse effects on the fishery. Environmental consequences of Westgold's Nome Offshore Placer Project after four years of study include:

1. After two to three years, substrate types occur in the same proportion as surrounding areas.
2. No change in oxygen concentration in water column.
3. No change in trace metal concentrations of eight priority metals.
4. Within three years recolonization community structure is similar to control areas; community appears to be moving through successional maturation process.
5. No avoidance of mined areas by King Crab.
6. No trace metals being concentrated in king crab, fish or king crab food items.
7. Community recovery based on existing database is estimated at less than five years for sand substrate and seven years for cobble substrate.

To	Bob Herron	From	M. Smith
Co.	Zothel LCO	Co.	

SS HE332 &amp; SB 318

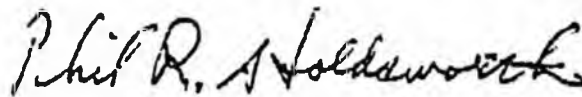
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January 30, 1990

It should be pointed out that platinum metal does not amalgamate with mercury. Its recovery is simply a gravity concentration process with the concentrates shipped to a refinery.

The Alaska Miners Association is opposed to this type of legislation which, by creating a "Critical Habitat Area" and "closed to mineral entry and mineral leasing", would prevent the production of a critical/strategic metal such as platinum. This is not in the best interest of the state and nation.

Respectfully submitted,



Phil R. Holdsworth

DAVID S. CASE

ATTORNEY AT LAW

550 W. SEVENTH AVE., SUITE 1380

ANCHORAGE, ALASKA 99501

(907) 276-0500

HAND DELIVERED

May 8, 1989

Department of Natural Resources  
Division of Mining  
ATTN: Kerwin Krause  
P.O. Box 107016  
Anchorage, AK. 99510-2020

Dear Mr. Krause:

RE: Additional Comments of Kuitsarak, Inc.  
To the Preliminary Best Interest Finding  
And Proposed Consistency Determination  
("PBIF") -- Goodnews Bay and Offshore

I. INTRODUCTION

The Department of Natural Resources' ("DNR") proposal to grant offshore prospecting permits ("OPP") in and offshore of Goodnews Bay is fatally flawed and cannot go forward.<sup>1</sup> The Resource Assessment Report ("RAR") on which the PBIF is based was developed under the direction of a consulting firm, WGM, Inc., which is also "assisting the applicant, Karin Sheardown, in planning and executing exploration of the subject lands."<sup>2</sup> Thus, the very consulting firm which had overall responsibility for the preparation of the RAR on which the PBIF (and therefore the FBIF) is based has a direct financial stake in the outcome of the state's best interest determination.

This fundamental conflict of interest calls into question the adequacy of the entire RAR on which the PBIF is based and may explain the substantial omissions which plague the RAR. The RAR

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<sup>1</sup> The flaws are not primarily in the process the Division of Mining ("DOM") has used to inform the public about the PBIF. We appreciate the fact DNR has taken steps to inform the public about the proposed disposal and has held hearings in the villages of Platinum and Goodnews Bay.

<sup>2</sup> See WGM letter of April 20, 1989 to Kerwin Krause offering comments on the PBIF on behalf of the applicant "in that capacity." Among other things, the WGM comments recommend that exploration be permitted throughout all of Goodnews Bay and that the OPPs be "put on hold" rather than rejected.

Kermit Krause Letter  
Kuitsarak Comments  
May 8, 1989

is, according to DNR's own explanation of the offshore mining program, "similar to a EIS".<sup>3</sup> As with a federal Environmental Impact Statement, the DNR commissioner is supposed to specifically use the RAR to consider the "potential for conflicts with the traditional uses of the land that could result from the . . . disposal."<sup>4</sup>

In this case, the RAR totally omits any mention of the probability of mercury poisoning which is now a known risk accompanying offshore mining in the Bering Sea and the effect that would have on the traditional uses the people of Goodnews Bay make of the land and surrounding waters. It also glosses over the effect of fuel spills and turbidity on these uses and fails to specify any plan to avoid or adequately mitigate these conflicts.

The RAR also fails to adequately plot and describe the subsistence uses made of the area. Even though the consultants were repeatedly advised by the Subsistence Division of the Alaska Department of Fish and Game that studies and maps were available to document subsistence uses outside of Goodnews Bay, this information was never incorporated in the RAR. Similarly, at the April 19 hearing in Goodnews Bay, many who testified complained about the inaccuracy of the subsistence data inside the bay. For these reasons as discussed more fully below, the PBIF does not constitute an adequate determination that the proposed disposal is in the state's best interest.

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<sup>3</sup> "ALASKA'S OFFSHORE MINERAL DISPOSAL PROGRAM", Department of Natural Resources (December 1988) at p. 7 (unnumbered).

<sup>4</sup> A.S. 38.05.830, requiring that before any disposal in the unorganized borough:

[T]he commissioner shall consider the effect that the . . . disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the . . . disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter.

Kermit Krause Letter  
Kuitsarak Comments  
May 8, 1989

The preliminary coastal zone consistency determination is also in error. DNR must bear in mind that under state law,<sup>5</sup> and contrary to the applicant's assertion,<sup>6</sup> this is not the mere adjudication of a prospecting permit. If the applicant is issued a permit for a tract, then under AS 38.05.250(b), if "workable mineral deposits" are found there, the applicant will be "entitled" to a mining lease. DNR must therefore assume that mining will be the result of this disposal. Yet the RAR simply fails to consider the full effect of dredge mining on the traditional uses of the existing resources of Goodnews Bay and the offshore lands. Had it done so the PBIF could not possibly have concluded that the proposed disposal was "consistent" with the Cenaliulriit Coastal Management Program.

Finally, legislation has now been introduced in both houses of the Alaska Legislature to declare the entire area which is subject to this disposal as "critical habitat" and to close it to mineral leasing.<sup>7</sup> It is clearly not in the state's "best interest" to dispose of these lands before the important public policy issues raised by this legislation are resolved. Even if that were not the case, there is substantial evidence now that the project is not in the state's best interest. At the very least, the resource assessment on which the best interest finding is to be based is so procedurally and substantively defective that it must be rejected as a proper basis for decision and a new one prepared in its place.<sup>8</sup>

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<sup>5</sup> AS 38.05.250(b).

<sup>6</sup> Letter from Karin Sheardown to Kerwin Krause (April 19, 1989), hereinafter "Sheardown Letter".

<sup>7</sup> SB 318 and HB 332 would establish the entire disposal area as "critical habitat" under AS 16.10.500 et seq.

<sup>8</sup> As discussed below, state funds would have to be appropriated for such an assessment, and it would have to be prepared by state personnel or at the very least qualified consultants hired by the state and not the applicant or potential applicants.

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## II. BACKGROUND

### A. Kuitsarak, Inc.

Kuitsarak, Inc. is the ANCSA village corporation for the community of Goodnews Bay. Its 224 shareholders comprise nearly the entire adult population of Goodnews Bay, nearly all of whom oppose the proposed disposal. Kuitsarak operates the village store and fuel supply business, both of which derive a substantial part of their annual revenue from the purchases made by people who are drawn to the vicinity by the rich renewable resources of Goodnews Bay and the surrounding waters.

The corporation supports the long range economic development of the community on terms that make sense to the local populace and which are consistent with the subsistence uses of its shareholders. The corporation does not support the "boom and bust" type of economic development which will likely accompany the proposed disposal. Kuitsarak does support the continued development of the community's commercial fishing and subsistence economy, which the proposed disposal puts at great risk.

### B. Goodnews Bay

"Mumtrak" is the original Yupik name for the Native village now known as "Goodnews Bay". The community, as both its Yupik name and the archeological evidence demonstrate, has been at its present location for thousands of years, no doubt due to the abundant subsistence resources found there. The community also benefits from a rich commercial salmon and herring fishery which last year (1988) had a total fish ticket value of \$1.4 million.<sup>9</sup> Contrary to the assertion in the WGM "Summary" to the RAR, the population of Goodnews Bay increased by a dramatic 41.7% between 1980 and 1985, and residents report it has continued to grow and not declined since.<sup>10</sup> The current stable Goodnews Bay population of about 230

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<sup>9</sup> RAR at C-2-15 (salmon) and C-2-18 (herring).

<sup>10</sup> The assertion at page 3 of the WGM "Summary" that the population in Goodnews Bay (and Platinum) "has been reduced in recent years, following a general trend of movement from villages to cities" is simply wrong-- if not deliberately misleading. There was a decline in both communities between 1970 and 1980 (technically "recent years"), but between 1980 and 1985 there was a 7.3% increase in Platinum and a 41.7% increase in Goodnews Bay. These figures are approximately twice the amount of the decrease

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is not evidence of a stagnating economy in need of more jobs as might be concluded from a casual reading of the WGM "Summary" to the RAR.

C. Subsistence and Environment

Goodnews Bay and the portion of Kuskokwim Bay adjacent to it are considered estuarine environments "where fresh and salt water mix creating conditions where salinity varies widely in response to tides, wind-driven currents, and river inflow."<sup>11</sup> The juxtaposition of fresh and salt water environments is responsible for the "high biological productivity" of Goodnews Bay and the surrounding waters:

derived from maxine plankton productivity in Kuskokwim Bay and the northcentral Bering Sea, from local beds of algae (kelp) and eelgrass, and from river-born carbon and nutrients from upland sources.<sup>12</sup>

The result is an environment which supports, in addition to a lucrative commercial and sports fishery, a rich and varied subsistence economy. Residents harvest crabs as well as razor and surf clams both inside and outside the bay as well as marine mammals, such as seals and walrus, which depend on these and other bottom dwelling organisms for food.<sup>13</sup> All five species of salmon as well as whitefish and five species of forage fish (herring, saffron cod, capelin, surf smelt and rainbow smelt) are important either as commercial or subsistence resources both inside and outside the bay along the coast to Red Mountain.<sup>14</sup> Birds, bird eggs and many varieties of berries are found on the shores and wetlands

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of the 10 years between 1970 and 1980 in half the time. The RAR also notes that the population increase is due to an approximately 7.3% annual immigration of people to the villages. See RAR at C-2-2 to 3.

<sup>11</sup> RAR at B-2.

<sup>12</sup> Id.

<sup>13</sup> RAR at B-3.

<sup>14</sup> RAR at B-7 to 10.

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of the Goodnews Bay estuary and also form a vital component of the rich, local subsistence economy.<sup>15</sup>

The RAR acknowledges the importance of these resources, but does a hopelessly inadequate job of mapping their extent both inside and outside the bay. The residents of Goodnews Bay testified to a man that much of the information on the maps accompanying the RAR was wrong. Michael Coffing, Bethel Resources Specialist with the ADF&G Division of Subsistence, also stated under questioning at the hearing in Goodnews Bay that he had repeatedly advised the consultants preparing the RAR that the information on subsistence uses outside the bay was not consistent with previous ADF&G subsistence studies. The ADF&G has no equivalent studies inside the bay, but the consultants haven't even included the available ADF&G subsistence information in the RAR.

#### D. Law and Policy

The state's statutory authority for offshore mining is found at AS 38.05.250. Under that statute, individuals or corporations may acquire prospecting permits on up to a total of 300,000 acres of tide or submerged lands. Of that 300,000 acres, a prospecting permittee is entitled to a mining lease for up to 100,000 acres if the permittee can demonstrate that the lands contain "workable mineral deposits." Although other permits will be required from other agencies, and DNR can impose reasonable mitigation requirements on the mining operation, once the OPP is issued, the applicant is guaranteed a lease if workable minerals are found.<sup>16</sup>

Before any OPP can be granted, DNR must do "a written finding that the interests of the state will be best served" by granting the OPP.<sup>17</sup> In the unorganized borough, as is the case here, the

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<sup>15</sup> See RAR C-2-8 through C-2-13 (including maps at Figures 2-3 and 2-4).

<sup>16</sup> See also 11 AAC 86.530, stating that a permittee "is entitled to a noncompetitive mining lease" and implementing the requirements of AS 38.05.250(b).

<sup>17</sup> AS 38.05.035(e). Significantly, this requirement does not apply to, among other things, a "permit or other authorization revocable by the [DNR] commissioner". AS 38.05.035(e)(3). The negative implication of this exclusion is that once granted an OPP cannot be revoked and if workable minerals are found, the lease cannot be denied.

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commissioner is further required to assess the effect of the disposal on the density of population in the vicinity of the affected lands and the "the potential for conflicts with the traditional uses of the land that could result from the . . . disposal."<sup>18</sup> If there are such conflicts, the commissioner is then supposed to "develop a plan to resolve or mitigate the conflicts consistent with the public interest".<sup>19</sup>

The "Best Interest Finding" is the vehicle for satisfying these statutory requirements. It in turn is almost solely driven by the facts, analysis and conclusions of a comprehensive "Resource Assessment Report". If the RAR is defective, because of bias, inadequate data, improper analysis or some other reason, the BIF is almost certain to fail to satisfy the requirements of law. That is, it will fail to consider the conflicts and whether or how they can be avoided or mitigated.

The BIF is especially crucial in the case of an OPP which legally entitles the applicant to a mining lease if "workable mineral deposits are found".<sup>20</sup> An adequate BIF before the granting of an OPP is the only way in which conflicts between mining and renewable resource use can be prevented. As a practical matter, after an OPP is granted, subsistence, commercial fishing and other competing interests will always be secondary to the development of the mineral resource, because the permittee who finds minerals is entitled to a mining lease. If the conflict is so significant that the only way to prevent it is to prevent mining, then that decision must be made before the OPP is granted.

DNR's regulations also appear to distinguish between new and old OPPs. The entire coast of Alaska was opened to new OPPs after June 30, 1984, unless DNR finds either that "mining would be incompatible with significant surface uses" or "adequate funding has not been appropriated for disposal of [offshore] minerals under the procedures provided by law."<sup>21</sup> Another provision of the regulations provides that all OPP applications pending as of

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<sup>18</sup> AS 38.05.830.

<sup>19</sup> Id.

<sup>20</sup> AS 38.05.250(b).

<sup>21</sup> 11 AAC 86.500(f)(2) and (3), respectively. 11 AAC 86.500(f)(1) also prevents OPP applications if the land contains known mineral deposits. Such deposits may only be offered by competitive leasing.

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January 2, 1983, will be adjudicated.<sup>22</sup> Apparently the Sheardown applications fall into this category, but it is difficult to see how the five new tracts (about 10,000 acres) proposed to be opened for permit applications qualify, given the restrictions of DNR's own regulations.

As noted earlier, the best interest finding must also be consistent with the Cenaliulriit Coastal Management Program (CCMP). If the applicant, any of the three state "resource agencies"<sup>23</sup> or Cenaliulriit do not agree on the consistency determination, then any of those parties can require that the consistency determination be "elevated" to the resource agency commissioners' level.<sup>24</sup> In this case, it is likely that the PBIF is not consistent with the CCMP and will be elevated.

It is also unclear why DNR is acting as the "coordinating agency" for this consistency determination. Throughout this entire process, DNR has maintained that the project will require both DEC and Army Corps permits. If that is so, then the state's ACMP consistency regulations require the Division of Governmental Coordination (DGC) within the Office of Management and Budget in the Office of the Governor to coordinate the determination.<sup>25</sup>

Governor Cowper's October 1988 "NATIVE POLICY STATEMENT" poses other obstacles to the determination that this proposed disposal of submerged lands is in the state's "best interest". The policy specifically notes as to rural Native communities like Goodnews Bay:

Economic development initiatives promoted by outside business interests or by a distant government do not necessarily improve the lives of local residents. The state views local communities and local initiatives as the basis for economic development and diversity, and

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<sup>22</sup> 11 AAC 86.500(c).

<sup>23</sup> Under 6 AAC 50.190(15): "resource agency" means the DEC, ADF&G or DNR.

<sup>24</sup> 6 AAC 50.070(j) and (k).

<sup>25</sup> Compare 6 AAC 50.030(a) and (b), regarding DGC and "resource agency" coordination of consistency determinations. If a federal permit or permits from two or more state agencies are required for a project, the DGC is required to coordinate the determination.

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ultimately economic stability for rural communities and improvement in the quality of life.

The State of Alaska recognizes that the majority of our rural communities are economically and culturally dependent on the harvesting of fish, wildlife and other natural resources. In recognition of this dependency, the state subsistence law places subsistence hunting and fishing as the priority use of wildlife and marine resources. (Emphasis added.)<sup>26</sup>

### III. DISCUSSION

#### A. MERCURY POISONING

Mercury is one of several "trace metals" (e.g. mercury, arsenic, lead and chromium) known to be exposed by offshore dredge mining in the Bering Sea.<sup>27</sup> The RAR describes the dredge mining process but concludes soothingly that: "No pollutants or contaminants are introduced during [the dredging] process, but trace metals existing in the substrate may be exposed."<sup>28</sup> In fact mercury is a highly toxic contaminant which appears to be at a high ambient level throughout the northern and central Bering Sea and is documented to be a trace metal in Bering Sea sediments elsewhere.<sup>29</sup>

Mercury is the most toxic trace metal regulated by the federal Environmental Protection Agency ("EPA"). "Its toxicity is of the same order of magnitude as that of several pesticides, and a hundredfold more toxic than the other trace metals of concern."<sup>30</sup> The ambient level of mercury in the waters of the Central Bering Sea (offshore of Goodnews Bay) has been documented at levels between two and twenty times above EPA's established level of

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<sup>26</sup> The Honorable Steve Cowper, "NATIVE POLICY STATEMENT" (October 1988) at 4.

<sup>27</sup> OCS Mining Program, Norton Sound Lease Sale, Final Environmental Impact Statement, Minerals Management Service, Alaska OCS Region (1989) at IV-B-13 and 14. Hereinafter ("Norton Sound FEIS").

<sup>28</sup> RAR at 4.

<sup>29</sup> Norton Sound FEIS at IV-B-13.

<sup>30</sup> Norton Sound FEIS at IV-B-14.

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concern.<sup>31</sup> EPA's level of concern is measured in hundredths of parts per billion of water. It is so low, because mercury has the ability to be concentrated in the food chain. So, a small increase in the amount of mercury in the water can result in a concentration of mercury in the food chain that is of risk to humans.<sup>32</sup>

The Norton Sound FEIS notes that the state does not have in place an effective water quality monitoring or other sampling program to determine when mercury accumulation due to offshore dredging reaches a critical level.<sup>33</sup> In the absence of any such program, the federal FEIS concludes that:

It is likely that any increases in mercury levels in fish or shellfish could cause pregnant women-- a possibly even the general population-- to cease consumption of fish and shellfish. The Native consumption of seafood is high enough that with the equivalent FDA action level applied to seafood consumed in Nome, there is almost no room for any bioaccumulation as a result of dredging activities to occur in seafood consumed by the general population. It is probable that if this were to happen, fish and shellfish would become undesirable for use and would not be harvested for a few years until residents could be assured that the populations are safe to consume. Cessation of the subsistence-harvest of fish or shellfish for a year or more would be a MAJOR effect on the subsistence-harvest of fish and shellfish.<sup>34</sup>

Elevated levels of mercury among coastal Native populations of the Yukon-Kuskokwim delta has already been demonstrated, and this is

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<sup>31</sup> Norton Sound FEIS at Table III-4a. Based on 54 separate observations, the waters of the Central Bering Sea have ambient mercury concentration levels of between 0.05-0.58 ppb and a mean level of 0.22 ppb. EPA's chronic criterion for mercury is 0.025 ppb. Id. at IV-B-14.

<sup>32</sup> Norton Sound FEIS at IV-B-14.

<sup>33</sup> Norton Sound FEIS, at IV-H-15.

<sup>34</sup> Norton Sound FEIS at IV-B-134 to 135. The FEIS reached a similar conclusion in the case of marine mammals. Id. at IV-B-137 to 138.

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just north of Goodnews Bay.<sup>35</sup> It is also common knowledge that the Kuskokwim River is a source of mercury, because of the developed mercury mine near Red Devil. The Kuskokwim River empties into Kuskokwim Bay, and Goodnews Bay is within Kuskokwim Bay. This, coupled with the already high level of mercury in the Central Bering Sea, means it is very likely that mercury poisoning is of significant concern for the Goodnews Bay proposal, yet it is not specifically mentioned once.<sup>36</sup>

Based on the results of the Norton Sound EIS, the Minerals Management Service ("MMS") has written G.H. Ivey, the Director of the Alaska Native Health Service, urging that: "a survey of coastal populations be conducted to determine existing concentrations [of mercury] and establish whether a human health condition exists."<sup>37</sup> Among other things the letter noted that:

[T]he major concern to populations consuming large amounts of seafood . . . is that there may already be mercury levels at or near threshold levels for effects on developing fetuses (10 to 20 ppm in hair). At the threshold level or above, some incidence of psychomotor retardation is expected. (Emphasis added.)<sup>38</sup>

It is clear that Goodnews Bay and Platinum are among the "coastal populations" that should be included within any such study. It is

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<sup>35</sup> Norton Sound FEIS at Sec. III.D.

<sup>36</sup> The data in the Norton Sound FEIS was available at least by November 1988, well in advance of the January 3, 1989 RAR. Nor were the authors of the RAR ignorant of the possibility. At page B-18, they note (incorrectly) that "preliminary results of monitoring offshore mining operations near Nome, Alaska suggest that dredging has had a negligible impact on trace metal levels in benthic organisms." The November 1988 Norton Sound Draft Environmental Impact Statement ("DEIS") says that there were elevated levels of mercury in marine mammals off Nome. See DEIS at IV-H-3. The "benthic organisms" off Nome found to have low concentrations of mercury were crabs, which concentrate mercury in their shells, not their meat. Norton Sound FEIS at IV-B-51.

<sup>37</sup> Letter from Robert L. Gordon and Irvan F. Palmer to G. H. Ivey (March 17, 1989). Attached as EXHIBIT 1.

<sup>38</sup> Id.

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equally clear that it is not in the best interest of the state to go forward with the proposed disposal until this important health issue can be resolved. At the very least, an adequate RAR must be done to properly analyze the risk offshore dredging poses to the health of unborn children before any OPPs are issued in or near Goodnews Bay.

#### B. Fuel Spills

Fuel spills are only briefly mentioned in the RAR.<sup>39</sup> They are extensively analyzed in the Norton Sound FEIS and DEIS. A dredge the size of the one contemplated for the proposed mining holds 6,000 barrels (240,000 gallons) of diesel fuel.<sup>40</sup> Because it has a greater concentration of aromatic hydrocarbons than crude oil, diesel fuel is more toxic to organisms. If it was spilled near shore during herring, capelin or salmon spawning it could have a serious effect on future generations of fish as well as clams, crabs and birds.<sup>41</sup> Moreover, two of the three dredges which have operated offshore in western Alaska have sunk during sudden storms with a loss of virtually all their fuel. The Norton Sound FEIS assumes that at least one such fuel spill will occur during the life of the project.<sup>42</sup>

So, a fuel spill of 240,000 gallons is more than just a remote possibility. DNR should assume it is a virtual certainty, and if

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<sup>39</sup> See e.g. RAR at B-17 and B-18, noting that they are a possibility and they can be mitigated by a "fuel spill contingency plan and [having] a good supply of spill clean-up equipment on site."

<sup>40</sup> Norton Sound FEIS at IV-B-64

<sup>41</sup> Id. at IV-B-32 and IV-B-64. A recent newspaper article examining the speed of environmental recovery after an oil spill noted:

Scientists at the Woods Hole Oceanographic Institute in Massachusetts say it took razor clams, fiddler crabs and other shellfish 20 years to completely recover from a spill of highly toxic diesel fuel in Buzzards Bay, Mass.

"RECOVERY: Ability of species to rebound from oil differs sharply", Anchorage Daily News (Saturday, May 6, 1989) at A8.

<sup>42</sup> Norton Sound FEIS at IV-B-32.

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recent experience is any guide, there is no reason to think that a "fuel spill contingency plan" and having a "good supply of spill clean-up equipment" will do much of anything.<sup>43</sup> In fact, in the unorganized borough, the law requires DNR to develop a plan to resolve or mitigate exactly this kind of conflict.<sup>44</sup> This project should not go forward, until there is such a plan. A 240,000 gallon fuel spill in or offshore of Goodnews Bay would kill all marine life coming in contact with it, deprive the people of Goodnews Bay, Platinum and the nearby villages of food for some 20 years and perhaps destroy their entire way of life. We do not think that would be in the state's "best interest".

### C. Turbidity

The RAR acknowledges that offshore dredging will cause turbidity which could cover the eelgrass beds and reduce herring spawning areas.<sup>45</sup> The RAR proposes to mitigate these effects by "careful timing of mining activities".<sup>46</sup> The PBIF proposes to use "silt curtains or other physical barriers" to minimize turbidity.<sup>47</sup> The problem is there is no description of exactly why either of these methods will work. Moreover, there is also no analysis in either the PBIF or the RAR of the effect suspended fine particle silt and clay will have on the problem.

The Norton Sound FEIS says that the Bima dredge operating offshore of Nome has consistently exceeded state turbidity standards and suggests no way to eliminate the problem.<sup>48</sup> The Bima does not operate around eelgrass beds, yet it consistently exceeds state turbidity standards. There is simply no guarantee that a similar dredge operating inside Goodnews Bay won't do the same thing and seriously affect the eelgrass beds precisely as the RAR suggests. Here as elsewhere, the PBIF and RAR are woefully inadequate. They have identified a serious problem, but overlooked existing data

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<sup>43</sup> RAR at B-18 and 19, describing mitigation of potential fuel spill.

<sup>44</sup> AS 38.05.830.

<sup>45</sup> RAR at B-17.

<sup>46</sup> Id.

<sup>47</sup> PBIF at 11.

<sup>48</sup> Norton Sound FEIS at IV-B-7 to 8.

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which indicates that none of the proposed methods to deal with the problem will really be effective.

D. Conflicts of Interest

It is simply incredible that a process which is supposed to determine the "best interest" of the state must rely on a resource assessment prepared by the OPP applicant. It is even more incredible that the applicant has hired the chief consultant who prepared the RAR to also assist her in "planning and executing exploration" on the state's lands.<sup>49</sup> Not only does the consultant have a direct financial stake in the outcome of DNR's BIF, but they have also submitted comments on the PBIF specifically urging that additional tracts be included in the disposal.

The consultant's probable bias, may be one reason for the significant deficiencies of the RAR previously noted. The net effect is an RAR which is not focused on a balancing of the interests at stake, but rather a justification for the applicant's position, with some obeisance to "mitigating measures". Thus: "[A]ll domestic platinum resources are considered to be strategic and critical." "Winter biological activity is low compared to summer." "Other portions of the offshore area appear to support lesser concentrations of bottom life." "The population of both communities has been reduced in recent years, following a general trend of movement from villages to cities." "In any given year, the dredge will occupy a very small area." and "Whether inside or outside of the Bay, properly timed exploration activities are not likely to interfere with any subsistence and commercial harvests."<sup>50</sup>

This kind of bias and subtle self-serving statements submitted on behalf of an applicant as the basis for determining the state's best interest will not pass judicial muster. The federal courts have rejected federal environmental impact statements in similar circumstances. For example, in Greene County Planning Board v. Federal Power Commission,<sup>51</sup> the court held that the Federal Power Commission couldn't delegate its own responsibility to prepare an

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<sup>49</sup> Letter from WGM, Inc. to Kerwin Krause (April 20, 1989) commenting on the PBIF.

<sup>50</sup> RAR at "Introduction", and pages 2, 2, 3, 4 and 6, respectively.

<sup>51</sup> 455 F.2d 412 (2nd Cir. 1972).

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EIS to the state power authority which was also to benefit from the decision. As the court noted:

The Federal Power Commission has abdicated a significant part of its responsibility by substituting the statement of [the state power authority] for its own. The Commission appears to be content to collate the comments of other federal agencies, its own staff and the intervenors (sic) and once again to act as an umpire. The danger of this procedure, and one obvious shortcoming, is the potential, if not likelihood, that the applicant's statement will be based upon self-serving assumptions.<sup>52</sup>

That is exactly what the state has allowed to happen here, and it poisons the whole process. If this project is to go forward, the RAR must be completely rewritten by DNR staff after sufficient funds have been "appropriated for disposal of these minerals under the procedures provided by law."<sup>53</sup>

#### E. Coastal Management Consistency

The Alaska Coastal Management Program ("ACMP") requires state agency activities (including best interest findings) to be consistent with the ACMP.<sup>54</sup> In order to implement the program, the state has been divided into a number of coastal management districts. The Cenaliulriit Coastal Management District is the area which includes Goodnews Bay and the offshore areas affected by the PBIF. In order for the proposed disposal to go forward, it must be found to be consistent with the Cenaliulriit Coastal Management Program ("CCMP"). The proposed disposal is inconsistent with the CCMP at a number of points-- particularly when it comes to the issue of subsistence.<sup>55</sup>

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<sup>52</sup> 455 F.2d at 420.

<sup>53</sup> 11 AAC 86.500(f)(3).

<sup>54</sup> See AS 46.40.010 et seq. and regulations 6 AAC 50.010 et seq., implementing ACMP.

<sup>55</sup> This discussion does not purport to describe all the points at which the PBIF is inconsistent with the CCMP. Kuitsarak anticipates that Cenaliulriit will submit more detailed comments.