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THE FOLLOWING POSITION PAPER WAS PRESENTED BY

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DOYON, LIMITED

TO THE ALASKA LAND USE COUNCIL

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IT IS PRESENTED HERE AS REPRESENTATIVE OF THE

POSTION HELD BY NATIVE CORPORATIONS REGARDING

THE EFFECT OF RS 2477 RIGHTS OF WAY ON THEIR LANDS

ALASKA LAND USE COUNCIL
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Fairbanks Panel Presentations: ACCESS ISSUES
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Good Morning.

My name is Morris Thompson. I am the president and chief executive officer of Doyon, Limited, the largest landholder of all the native corporations established under the Alaska Native Claims Settlement Act of 1971. Doyon will eventually receive title to 12.5 million acres of land in Interior Alaska. Much of Doyon's landholdings are located wholly within or effectively surrounded by the federal conservation system units, that is parks and refuges, which were established in 1980 as part of ANILCA legislation. With these facts in mind, it's pretty easy to see that there are many access issues facing Doyon. So when my good friend Hugh Fate asked me to appear on this panel to discuss access, I heartily welcomed the opportunity.

Before I get too far into my remarks this morning, I do want to point out a couple of things: First, my remarks will be limited in scope; that is, I will only address access matters of special interest to Doyon and not speak to broader questions that face the public in general. There are others on the panel that already have or will address these general questions.

Second, it is important for all of you to understand that the native community is not monolithic -- there is often a wide divergence of opinion on any number of subjects; thus, the positions taken by Doyon may not always be reflective of a general consensus within the native community. However, we at Doyon believe that in most instances we are in the mainstream of the native point of view.

The topic this morning is "ANILCA Title XI, R.S. 2477 Rights-of-Way and Other Access Issues -- What Is Needed In Interior And Northern Alaska?" As far as Title XI goes, most of you all know that it provides a procedural and substantive framework for expediting the approval or disapproval of applications for new, yet to be established transportation and utility systems into and across federal conservation system units. In effect, one-stop shopping is provided for, as the procedures in Title XI superseded rather than supplemented the laws existing in 1980 when ANILCA was passed.

The obvious principal focus of Title XI is to provide new access corridors of a permanent, improved, year-round nature to and from resource development areas. There are two general categories of future access users: (1) those who wish to go across the conservation system units so to access holdings not in the conservation system units, and, (2) those who need to get to and from holdings wholly within or effectively surrounded by the

conservation system units. I'm going to address Title XI from latter or inholder's perspective only.

I mentioned earlier that Doyon will ultimately own 12.5 million acres in Interior Alaska. Of these 12.5 million acres, approximately 3.5 million acres, all located away from native villages, were specifically selected with resource development potential in mind. And, we at Doyon have identified numerous access corridors which will have to cross parks and refuges in order for resource development to ultimately succeed on some of properties located within these conservation system units.

Because, for the most part, Doyon's land selections back in early and mid 1970's preceded the establishment of the ANILCA conservation system units in 1980, a very special provision within Title XI was carved out for Doyon and all other owners of private lands which in 1980 became effectively surrounded by refuges or parks. Section 1110(b) of ANILCA guarantees -- and that's what the legislative history says, "guarantees" adequate and feasible private access for economic and other purposes subject only to reasonable regulations issued by the federal government so to minimize possible adverse impacts.

In addition to this general guarantee, routes of access, as pointed out in the legislative history, must also be granted to inholders so that they are practicable in an economic sense from a developer's perspective; otherwise, an inholder such as Doyon

and many of you out there in the audience could be denied any economic benefit resulting from land ownership. This all makes sense. Congress has usually sought to protect prior "valid existing rights." Section 1110(b) spells out this concept in detail so quibbling with federal bureaucrats might hopefully be minimized. But more importantly, Section 1110(b) of Title XI expands the "valid existing rights" concept so to include <u>future access needs linked to prior existing ownership rights</u>; actual access use before 1980 is not necessary.

The private access guarantee found in Section 1110(b) is materially different from what faces other potential Title XI applicants who need permanent access across a refuge or park: there is no access guarantee for anyone else. Thus, we believe that Doyon is in a highly advantageous position to develop its land; and, our situation is clearly much better than most others who wish to develop similar nearby lands but must secure access through a park or refuge under a different legal standard.

We at Doyon feel relatively comfortable at this time with the protections built into Title XI as those provisions apply to us as inholders. However, the law has not yet been tested. Resource development on most native lands, especially in the Interior, is in its infancy, and no transportation or utility corridors across the conservation system units are presently

needed by Doyon. Only time will tell whether the federal land managers will assist in carrying out the intent of Congress or whether they or others will be obstructionists.

I would now like to spend a few moments talking about ANCSA's Section 17(b) easements and then address the now-fashionable R.S. 2477 issue. Because both of these issues are sometimes related, I'll highlight that relationship for you also. Congress, through ANCSA, required that public easements be reserved to the United States when lands are conveyed to native corporations. The basic theory behind the easements was that public should have access to public lands even though private native lands might be "in the way."

There are now literally hundreds of easements starting on public lands which cross native lands so to provide public access to other public lands. The basic standards for easement reservation are, (1) the lack of reasonable alternative access on public lands, and, (2) existing use. However, the ANCSA easement regulations are flexible and possible future uses are taken into consideration by BLM when the easements are reserved. We have not always been happy with some of the easements imposed and have challenged them from time to time.

An important element of ANCSA easements is that each is specific as to location and uses allowed. The management of

easements is either through BLM, Park Service, or Fish & Wildlife Service, depending on the location of the easement. Thus, for example, if there is a year-round improved road across native lands in the 40-Mile country, there will be a 60-foot-wide year-round road easement reserved to the United States and managed by BLM. Likewise, if there is a winter road across native land which is used to haul heavy equipment, such a road will likely be reserved as such for winter use but summer use may be restricted if the typography and environment won't sustain similar uses after break-up. While we have our differences with the easement managers from time to time and there is a chronic lack of funds to properly manage the easements, the basic format is sound.

Additionally, another provision of ANCSA is Section 17(b)(2) which provides that anyone who has a valid existing right, such as a mining claim, on Native lands shall continue to have whatever rights of access that he or she possessed prior to a native conveyance. So, if you have a mining claim or a trade and manufacturing site on native lands, you can still use whatever access route you have been using to get to your property.

I sometimes hear people complain that such a right is not of much value since specific private access routes are not designated or reserved by BLM when a native conveyance is made; thus, so the complaint goes, title to a mining claim is somewhat clouded in that access rights aren't clearly defined. Well, we

would agree with those concerns and as a result we, as a matter of course, issue private easements to miners and other inholders. This is a good land management practice for us and it is something that you can record with your mining claim or other interest and it may give you a little more piece of mind. This recordable document is also likely to make your property a bit more marketable. The price for such an easement is $50 which we use simply to offset the costs of processing the document.

This brings me to my R.S. 2477 comments, some of which many of you won't like. It is our position that R.S. 2477 rights-of-way do not and cannot exist on native lands. Congress very specifically created a unique regime for public and private access into and across native lands. ANCSA's access provisions were based on prior existing yet continuing uses, not unlike the true R.S. 2477 concept. In contrast, the State lays claim under R.S. 2477 to access routes on Native and non-Native lands which were abandoned generations ago and little used even then -- a flawed legal analysis. In this light, the only real differences between ANCSA's access provisions and R.S. 2477 are: (1 the regulation of uses by the federal government, not the State of Alaska, and, (2) the avoidance of duplicative routes across the same tract of native land.

Without the ANCSA provisions, which we believe qualify and supersede R.S. 2477, there would be a mishmash of duplicative,

unrestricted, and unregulated access corridors criss-crossing native lands. I submit that the clear language of ANCSA's Section 17(b) and Congress' obvious intent does not permit such a system on our lands, especially in light of the more than adequate public and private access corridors which have already been reserved.

Now for the good news. I want to point out that if you think much about what I said earlier regarding the ANCSA Section 17(b)(1) and 17(b)(2) easements, many of the R.S. 2477 issues become moot, at least with regard to native lands. There already exist public access corridors across native lands. And, most of the R.S. 2477's identified by the State of Alaska on native lands follow the same alignments as ANCSA's public easements. Those of you with private rights within or adjacent to native lands have private access rights for pre-existing uses which are already protected by law and so recognized by Doyon. Furthermore, Doyon is more than willing to discuss the expansion of pre-existing private uses and would consider granting new private access rights. Remember, your private access needs may very well enhance development opportunities on some of our properties. However, it is highly unlikely that we would grant additional public access. So all in all, the R.S. 2477 issue seems to be much ado about nothing, at least with respect to several million acres of Doyon lands.

In closing, I hope that I have given you the opportunity to better understand certain access issues as they affect Doyon's land and our views about those issues. If I have, then we have accomplished quite a lot this morning.

Thank you.