



January 24, 2018

Attn: Ambler Road Comments  
222 West 7th Avenue, Stop #13  
Anchorage, Alaska 99513

*Submitted via email to [blm ak akso amblerroad comments@blm.gov](mailto:blm_ak_akso_amblerroad_comments@blm.gov)*

**Re: Ambler Road Project**

Thank you for providing Doyon, Limited ("Doyon") the opportunity to submit the following comments in response to the "Notice of Intent and Extension of Time To Prepare an Environmental Impact Statement for the Proposed Ambler Mining District Industrial Access Road, Alaska" issued by the Bureau of Land Management ("BLM") on February 28, 2017. 82 Fed. Reg. 12119 (2017).

**I. Introduction**

Doyon is one of the thirteen Native regional corporations established by Congress under the terms of the Alaska Native Claims Settlement Act ("ANCSA"), Pub. L. No. 92-203, 85 Stat. 688 (1971), as amended. Headquartered in Fairbanks, Doyon is the largest private landowner in Alaska, with a land entitlement under ANCSA of more than 12.5 million acres. Doyon's lands extend from the Brooks Range in the north to the Alaska Range in the south. The Alaska-Canada border forms the eastern border and the western portion almost reaches the Norton Sound. Doyon's mission is to promote the economic and social well-being of our present and future shareholders, to strengthen their Native way of life, and to protect and enhance our land and resources.

The proposed Ambler Mining District Industrial Access Project is an approximately 211-mile long road "originating at the Dalton Highway in the vicinity of Prospect Creek and terminating at the Ambler Mining District," the purpose of which is to provide transportation access to support and encourage mineral exploration and development in the Ambler Mining District in northwest Alaska. 82 Fed. Reg. at 12119. The road is proposed to cross approximately ten to twelve miles of Doyon-owned lands, although Doyon expects to see little if any material direct or indirect economic benefit from the project. As further discussed in these scoping comments, Doyon believes that variations of the Cape Darby and Selawik Flats routes westward from the Ambler Mining District would provide significant comparative benefits and lesser impacts than previously reported and should be given further detailed consideration. Doyon also believes that BLM's review and decision making process must take a

careful look at a number of critically important issues associated with the proposed project, including, but not limited to: the potential for the project to be opened to the public, much like the Dalton Highway was in the 1980s and 1990s, and associated impacts; impacts to ANCSA corporations, which have been suggested to be uniformly positive, though we expect that they are not; and impacts on subsistence use and access. As it looks at these issues, and throughout its review and decision making process, BLM should engage with potentially impacted local communities and must meaningfully consult with Alaska Native Corporations in accordance with applicable statutory requirements and departmental and agency policies.

## II. Comments

- A. Alternative routes to the west from the Ambler Mining District would provide significant comparative benefits and lesser impacts than previously stated and should be given further detailed consideration.

Between 2010 and 2012, the Alaska Department of Transportation & Public Facilities (DOT&PF) undertook a “reconnaissance analysis” of eight distinct corridors, including both routes heading east toward the Dalton Highway and west toward either Kotzebue Sound or Norton Sound. Ambler Mining District Industrial Access Project Corridor SF299 Supplemental Narrative (June 2016), p. 8. This analysis culminated in a Summary Report dated May 2012, which identified the Brooks East corridor as the most feasible alternative and determined that routes to the west would have greater environmental impacts and would otherwise be unfeasible. Ambler Mining District Access Summary Report AKSAS 63812 (DOWL HKM, 2012). This analysis, however, failed to sufficiently consider certain significant factors and entirely failed to address others. BLM’s review and decision making process should give further detailed consideration to certain western route alternatives, particularly the Cape Darby and Selawik Flats routes and refinements to those routes that would result in both improved benefits and reduced impacts, as described below.

DOT&PF’s preliminary access corridor alternatives selection process focused on perceived environmental impacts with secondary consideration of direct capital and maintenance costs. While technical aspects related to road construction were included, they were not given much weight, and certain critical factors were not considered. Additional factors that were not considered, but that should be assessed as part of BLM’s review and decision making process, include the following:

- *Mine operating cost as impacted by the complete logistics chain.* This is a function of the real cost per ton of freight delivered to the Ambler Mining District from point of origin and cost per ton of concentrate or product delivered to smelter or buyer. The “scoring” system utilized to compare access corridor alternatives, as presented in the *2012 Ambler Mining District Access Summary Report*, identified the Brooks East Corridor as the least cost alternative. However, this assessment does not include the complete transportation network and fails to account for 600 miles of existing additional road or road/rail required to access a port facility at Anchorage or Valdez from the Brooks East Corridor terminus at the Dalton Highway. In addition, the Dalton, Elliot and Parks highways would all have increased maintenance costs associated with Ambler Mining District development traffic. The alternative use of

the Alaska Railroad would add an additional logistics element but would also reduce traffic on the Parks Highway. To fairly evaluate the alternatives, the cost per ton for freight and product delivered from source to customer should be compared.

- Facilitation of additional development outside of the Ambler Mining District.* The earlier access corridor comparisons did not factor potential to improve the viability of other mineral districts. The west corridors to the Seward Peninsula could provide access to the numerous mining districts (Koyuk District, Fairhaven District, Kougarok District, Council District, Nome District and Port Clarence District), all having known potential for resource development. Each of these districts could benefit from port and road infrastructure. By comparison, the Brooks East Corridor has limited potential to spur development of other mineral resource districts. The project proponent, AIDEA, is a public corporation of the State of Alaska, created “in the interests of promoting the health, security, and general welfare of all the people of the state, and a public purpose, to increase job opportunities and otherwise to encourage the economic growth of the state, including the development of its natural resources, through the establishment and expansion of manufacturing, industrial, energy, export, small business, and business enterprises and other facilities . . . .” Alaska Statutes 44.88.010(b). Any review of the various route alternatives should include an assessment and comparison of the extent to which a road project will help achieve these objectives and stimulate the development of natural resources in areas outside of the Ambler Mining District. While the stated “purpose of this project is to support mineral resource exploration and development in the Ambler Mining District in northwest Alaska,” unlike the Brooks East route, a western route would enable AIDEA not only to meet the proposed project’s purpose and need but also support mineral resource exploration and development in other mining districts in the state. Ambler Mining District Industrial Access Project Corridor SF299 Supplemental Narrative, p. 14.
- Relationship to state or regional long-term transportation and infrastructure plans.* The corridor comparison did not include an assessment of how each corridor alternative would contribute to state or regional long-term transportation and infrastructure plans. West corridors may contribute more to long-term plans. For example, a deep-water port facility in the Cape Darby area would presumably provide significant benefit to communities in the region and provide a long-sought deep-water port in the north Bering Sea. In addition, the long planned “Road to Nome” could potentially share infrastructure with the Cape Darby Corridor Alternative.
- Transportation safety and risk.* The corridor comparison did not look at the risk associated with transporting fuel, mineral process chemicals, or mineral concentrate over the various route options and distances associated with each. The Brooks East Corridor would presumably require transport overland by truck and possibly rail for roughly 850 miles, whereas the Cape Darby Alternative would only require 340 miles of overland transport. BLM’s review must look at transportation

safety and risk-related impacts not only associated with use of the proposed road itself, but also with use of connecting infrastructure, such as the Dalton Highway in the case of the Brooks East Corridor. An eastern route connecting with the Dalton Highway, like the proposed Brooks East route, will significantly increase mine-related traffic on the highway, including from heavy industrial vehicles. Safety, risk, maintenance, and other issues relating to this increased traffic must be carefully assessed.

- *Impacts of stream crossings on salmon and sheefish habitat.* The Corridor Evaluation Criteria assumed that any stream crossing negatively impacts salmon or sheefish habitat. This is not a correct assumption. Stream crossings can be designed and constructed with no significant impacts to habitat.
- *Road design criteria.* The Corridor Evaluation Criteria did not address the advantages that would be associated with being able to adapt the road design criteria to the unique transport requirements of a heavy-haul mine access road, rather than adapting mine transportation operations to existing infrastructure. As stated in the Ambler Mining District Access Design Criteria Memorandum, sec 2.1.2, dated September 2011, “Since several of the access corridors connect to existing rural roadways, vehicles using the new corridor must also be consistent with criteria governing existing highways.” If the mine access road corridor did not include existing highway access and had its origin at a port location, such as Cape Darby, the road could be designed for the most efficient and cost effective means of transport, allowing transport of large and/or heavy equipment as well as oversize modules. This would be expected to result in operational cost savings and reduced environmental impacts.

Review of the process documentation suggests that relatively little effort or resources were invested in selecting the west corridor alternative routes. It is also apparent that only a very cursory review of terrain and route engineering was completed on each of the west corridors. It appears that the corridors to the Seward Peninsula (Selawik Flats Corridor and Cape Darby Corridor) could have been significantly improved by locating the routes to take better advantage of the terrain resulting in much higher scores in the rating process. By relocating the corridors to roughly trace the Pacific/Arctic Continental Divide, the impacts to wetlands, habitat and streams would be substantially reduced. In addition, better routing would significantly improve road constructability and access to suitable embankment materials. Following is a summary listing of issues that were noted for each scoring criterion for the Cape Darby Corridor:

- *Corridor length.* As currently presented in the Ambler Mining District Access Summary Report, the Cape Darby Corridor is 340 miles long. Improvements to the route to reduce impacts and take advantage of better, more suitable terrain would likely increase it to approximately 360 miles.

- *Federal Conservation System Units.* As presented in the Summary Report, this corridor would cross through one CSU, the Selawik NWR. The Ambler Mining District Access Summary Report defines the length of the corridor within the CSU currently as approximately 77 miles. It appears from review of the available map and terrain data that the corridor length within the CSU could be reduced to approximately 45 miles.
- *Wild and Scenic Rivers.* According to the Ambler Mining District Access Summary Report, the Cape Darby Corridor would cross the Selawik Wild and Scenic River with a span length of approximately 280 feet. Improvements to the route could eliminate this crossing.
- *Salmon/Sheefish rivers.* As currently presented in the Ambler Mining District Access Summary Report, the Cape Darby Corridor would cross 26 mapped anadromous streams and 51 streams assumed to be anadromous for a total of 77 streams. Improvements to the route to closely follow the Continental Divide and avoid lower reaches of the critical watersheds would reduce the number of presumed anadromous stream crossings to less than 25.
- *Caribou habitat.* According to the Ambler Mining District Access Summary Report, Cape Darby Corridor is completely within mapped migratory and winter range for the Western Alaska Caribou Herd. Rerouting should result in no material change.
- *Threatened and endangered species and critical habitat areas.* The Ambler Mining District Access Summary Report states that the Cape Darby Corridor has potential to affect areas where polar bear, spectacled eiders and yellow-billed loons may be found. Rerouting should result in no material change.
- *Wetland habitats.* As currently presented in the Ambler Mining District Access Summary Report, the Cape Darby Corridor would cross through 98 miles of habitat preliminarily mapped as wetlands. Improvements to the route to better utilize upland terrain could substantially reduce the amount of wetland habitat traversed.
- *Availability of material sites.* The Ambler Mining District Access Summary Report states that the Cape Darby Corridor has material sites available every 10 miles for about 58% of the corridor. Improvements to the route to utilize better terrain could increase the availability of material sites every 10 miles to essentially 100%.
- *Large bridges.* As currently presented in the Ambler Mining District Access Summary Report, the Cape Darby Corridor would have 193 major stream crossings, including 25 large bridges that span a total of 7,890 linear feet. Improvements to corridor routing to utilize the Continental Divide, resulting in elimination of the

majority of stream crossings, could reduce the large bridge tally to less than other routes.

- *Construction cost.* As currently presented in the Ambler Mining District Access Summary Report, the Cape Darby Corridor construction cost is estimated at \$950 million. This is in the upper range of road construction costs. This cost could be reduced by elimination of many stream crossings and improving constructability and access to materials by locating the route in better terrain, as discussed earlier.
- *Maintenance cost.* The Ambler Mining District Access Summary Report estimated annual road maintenance cost for the Cape Darby Corridor to be approximately \$13.1 million. This is in the high range of maintenance costs for the corridors evaluated.

In summary, Doyon believes that the “high level” review of the process utilized to select the Brooks East Corridor as the preferred access to the Ambler Mining District, and to potentially exclude any western routes from further detailed consideration, failed to sufficiently address, and in some cases failed to address entirely, significant considerations and criteria typically included in an evaluation of access options to a new mine development project. Western routes, and particularly the Cape Darby and Selawik Flats Corridors and route modifications to those routes that would further reduce impacts as noted in our comments, should be further evaluated *in detail* as part of BLM’s review and decision making process. This review should include serious consideration of relevant factors, including, but not limited to, the following:

- economics of corridor options as a function of the complete logistics chain;
- opportunities to access other resource areas;
- corridor fit with overall state transportation and infrastructure plans;
- transport chain risk assessment; and
- cost and operational benefit of dedicated heavy haul road from port to mine.

B. Serious consideration must be given to the potential for the project to be opened and available for public use.

BLM’s review and decision making process with regard to the proposed project must seriously consider the very real possibility that the project, like the Dalton Highway, will be opened to public use. The James W. Dalton Highway, spanning over four-hundred miles from Livengood, north of Fairbanks, to Deadhorse, near the Arctic Ocean, was originally built in 1974 as a haul or supply road to support the Trans-Alaska Pipeline System (“TAPS”) and Prudhoe Bay oil fields. Originally known as the North Slope Haul Road, the highway was restricted to commercial traffic until 1981, when the state opened public access over approximately half of the route to Disaster Creek (Milepost 211). The state opened public access over the remainder of the route in 1994, following a heavily litigated dispute with the North Slope Borough and Tanana Chiefs Conference, who opposed opening the entire road to the public. *Turpin v. North Slope Borough*, 879 P.2d 1009 (Alaska, 1994). Although the Dalton Highway continues to carry

significant commercial truck traffic to and from Prudhoe Bay, locals and visitors can now use the highway to access what were once remote and unreachable areas.

Doyon believes that it is reasonably foreseeable that, despite AIDEA's stated intent, there will be political pressure to open the proposed road to public use and that the road ultimately could be made available for either restricted or unrestricted use by the general public. Much as the Dalton Highway was and is "only maintained land route linking central Alaska to the northern coast of Alaska," *Turpin*, 879 P.2d at 1012, the proposed Ambler road would be the only maintained land route linking the Ambler Mining District in the northwestern Arctic to central Alaska. As stated in the Recreation Activity Plan for the Dalton Highway and the Utility Corridor, prepared by BLM in 1982, "Prior to 1981, the highway was open for public use only to the Yukon Crossing . . . . The State of Alaska and BLM are committed to making this scenic splendor available to the public." It is very much possible that the proposed project could meet a similar fate.

As was the case with the opening of the Dalton Highway to public use, the availability of the proposed project for general public use would result in opening a large, remote area of Alaska to public access. The resulting increase in the types and amount of public use made possible by a public road could have adverse impacts on local communities and natural resources in these areas, as well as impacts on the road and its commercial and industrial use. Broader public use of the road would have impacts that are comparatively different from the limited industrial use road presumed in AIDEA's right-of-way application. There are important implications, for instance, for safety, law enforcement (e.g., accident response, highway patrol, criminal investigation, search and rescue), general health and welfare (e.g., the Dalton Highway led to social issues like significantly greater alcohol use), fish and wildlife, maintenance repairs and road work. As was the case with the Dalton Highway, opening the road to public use also would increase access to fish and game resources along the corridor, encroaching on fish and wildlife populations and habitat and creating additional pressure on subsistence resources by non-local sport hunters and anglers. This could, among other things, lead to access limitations on both subsistence and sport hunters and anglers, withdrawing lands that might otherwise be available for subsistence use. *See* Final Environmental Impact Statement, Renewal of the Federal Grant for the Trans-Alaska Pipeline System Right-of-Way (Nov. 2002); *see also* Dalton Highway Master Plan (Dalton Highway Advisory and Planning Board, 1988) (acknowledging that opening the road in 1994 caused additional issues). As it moves forward with its review and consideration of AIDEA's application, BLM should take a hard look at the possibility that the road to be opened to public use (whether over the near or longer term) and the potential impacts associated with such a public use road.

C. Asserted positive impacts on ANCSA corporations must be further explored and clarified.

AIDEA's right-of-way application asserts that "[e]ffects on ANCSA corporations are expected to be positive." Ambler Mining District Industrial Access Project Corridor SF299 Supplemental Narrative, p. 20. It explains that "Native corporations have the potential to gain revenues from land leases, material sales, and by providing goods and services associated with road construction and operations." *Id.* NANA Regional Corporations, it further states, "would also benefit indirectly from mining-related revenues generated in the Ambler Mining District

and Native corporations in the region could benefit from providing goods and services to the mining companies conducting exploration and operations in the District.” *Id.*

While the proposed project may positively impact certain ANCSA corporations, this is unlikely to be true as to all ANCSA corporations. At this time, we remain unaware of any positive economic impact, either direct or indirect, to Doyon from the proposed project.

Because the proposed Ambler road crosses the Doyon region, Doyon has closely monitored the project development of the Ambler road and has met with representatives from the State of Alaska, including from the Department of Natural Resources, AKDOT, AIDEA, the Department of Fish and Game, as well as the Governor’s office. To date, Doyon has neither endorsed nor opposed the road project. Doyon has not, however, agreed to the use of its lands for the road. As a for-profit corporation, Doyon has analyzed the route for economic benefits from both the road and the proposed mine sites, and currently Doyon does not expect the road to materially benefit Doyon economically, directly or indirectly.

Doyon urges BLM to reach out to all of the impacted communities and other impacted stakeholders, such as village corporations and Native allotment land owners. Community response to the road has been mixed, expressing both support and opposition. Concerns and questions for opportunities have been raised, including environmental impacts of the Ambler mine, opportunities for spur roads, public access for residents, public access for non-residents, costs of development and maintenance, project timelines, potential for lower energy and supply costs, possibility of jobs, and enforcement of hunting and fishing regulations along the route. All of these issues, and other community concerns, must be fully identified, assessed, and addressed as part of BLM’s review of the proposed project.

**D. Socioeconomic and other impacts on rural communities—beneficial and adverse—must be specifically identified and assessed.**

Doyon has significant concerns that, although isolated rural communities in the vicinity of the right-of-way will bear the greatest burden of the project’s impacts, it is not clear how and to what extent they will enjoy any of the benefits of the project or how these impacts would be mitigated. As it reviews and assesses the proposed project and alternatives and the potential effects thereof, BLM must meaningfully consider project impacts on local communities and how these impacts can be mitigated.

As an industrial road, the project “would not be open for public access”, 82 Fed. Reg. at 12119. Local residents generally would not be permitted to use the road. While we understand that local communities or businesses might be provided an opportunity to obtain authorization by the road operator to make use of the road, subject to approval and environmental and safety controls, and that communities might be permitted to construct spur roads, it seems unlikely that such an all-season industrial access road will accommodate any meaningful community or commercial use not directly associated with the development or operation of the mine. *See* SF 299 Corridor Narrative Supplement, p. 1 (“Access to the road would be controlled and primarily limited to mining-related industrial uses, although some commercial uses may be allowed under a permit process.”); *id.*, p.5 (“Other permitted traffic at times could include commercial deliveries of goods for local communities or commercial transport for local residents and emergency response authorized through access permits. . . . The traffic level for



these local community and emergency response operations would likely total less than one truck or bus per week.”).

AIDEA’s right-of-way application for the project asserts that “the road is expected to provide several benefits to residents of the region.” Ambler Mining District Industrial Access Project Corridor SF299 Supplemental Narrative, p. 16. According to the application, these include:

- Increased employment and income opportunities in the short term and long term in these areas where few employment opportunities exist. These opportunities are associated with road construction and operations as well as in mineral exploration and development.
- Potential for communities to develop businesses to support the road construction and operation and to support mineral exploration and development.
- Potential for communities to use the road to reduce fuel and freight transportation costs to reduce the high cost of living in these rural areas.
- Indirect benefits from increased revenues to the Northwest Arctic Borough and NANA Regional Corporation, which are used to support many social services in the region.

*Id.*, p. 16-17. Additional “public benefits” identified by AIDEA include:

- Direct employment and wages related to road construction and operation and maintenance activities;
- Indirect employment and wages related to mineral exploration and development activities in the Ambler Mining District,
- Revenues to local and State government from mineral exploration and development activities in the District;
- Revenues to Alaska Native Corporations and their shareholders from mineral exploration and development activities in the District; and
- Opportunities for rural residents to continue to live in their communities while having the ability to generate income and the possibly to create new economic opportunities based on proximity to road access.”

*Id.*, p. 15.

These purported benefits, and whether and the extent to which they would be enjoyed by rural communities along the project route, should be scrutinized and assessed in greater detail as part of BLM’s consideration of AIDEA’s application. In addition to assessing impacts on the natural and cultural resources of importance to the isolated rural communities, BLM must assess the socioeconomic impacts of the proposed action and alternatives. How and the extent to which the proposed project and alternatives will have economic, social, or health and welfare effects, including, but not limited to, impacts on employment and local tax bases, education, crime, and recreation, all must be given meaningful consideration and analysis in BLM’s review process. Further details on these potential impacts—both beneficial and adverse—should be made available to the public early in the review process so that local communities along the route and their residents can provide educated comments and better inform BLM’s decision making process.

E. Subsistence use and access must be protected.

As noted above, Doyon's mission is to promote the economic and social well-being of our present and future shareholders, to strengthen their Native way of life, and to protect and enhance our land and resources. Subsistence hunting and fishing is critically important to our shareholders and to our Native culture. For thousands of years, Alaska Natives in the project area have depended upon wild plants, fish, and animals for subsistence. Subsistence activities remain an important part of the traditional Native culture and a primary source of nutrition for residents of remote rural villages. In ANILCA, Congress found that "the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence," and it included substantive provisions to protect such opportunity. 16 U.S.C. § 3111(1).

The proposed project is likely to affect access and activities that could adversely impact these customary and traditional uses. As proposed, public access to and use of the road would be highly restricted (though, as noted above, there is no assurance that this would remain the case); there would be no public use of the road, including for access to subsistence opportunities. No hunting or fishing would be allowed on the right-of-way. Subsistence activities near the road, even outside of the right-of-way, could also be restricted due to safety concerns.

The potential for unauthorized use of the road and right-of-way, as well as possible future authorized public use of the road, presents additional concerns. For instance, unauthorized individuals could use the road to access areas that would not otherwise be accessible, and compete for subsistence resources traditionally used and relied on by residents of the local community. The potential risk of such impacts and how they are appropriately mitigated may be different during Phase I, when the road is being used on a seasonal basis from August through April, than during the other road phases, when the road is being used on a year-round basis. It can also be anticipated that the road will be opened to public access when mine activities are completed. We understand that AIDEA anticipates that it will need to employ guards at the road entrance, and that AIDEA is exploring fiber optic-based technology might be used to make sure the road is closed to the public and non-permitted uses. While AIDEA has stated that it will work with Doyon on additional measures and security patrols during hunting season to prevent unauthorized access, these are important issues that must be appropriately considered and addressed during BLM's review and decision making process.

AIDEA's right-of-way application acknowledges the potential for subsistence impacts, but studies suggest that impacts on subsistence use and access are likely to be more significant than suggested by the application. According to the Ambler Mining District Industrial Access Project Corridor SF299 Supplemental Narrative:

Residents of Bettles and Evansville use areas in the vicinity of the communities for gathering subsistence resources. In particular, ADF&G has identified areas along the Alatna, John, and Koyukuk Rivers as subsistence use areas for these communities (Braund & Associates, 2012). The proposed road may affect subsistence harvests in the immediate vicinity of the road.

Ambler Mining District Industrial Access Project Corridor SF299 Supplemental Narrative, p. 18.

Residents of Alatna and Allakaket gather subsistence resources from a very wide area including the lower Koyukuk valley and particularly up the Alatna River. The proposed road may affect subsistence harvests in the immediate vicinity of the road. Overall impacts on subsistence resources (fish, wildlife, etc.) however are expected to be low and only in close proximity to the road itself, affecting only a small area compared to the overall availability of areas usable for subsistence harvests.

Documented traditional use areas for subsistence harvest for Hughes are south of the proposed road corridor and minimal effects on the community's subsistence use are anticipated. Huslia is located 90 miles from the road corridor and minimal effects from the road are anticipated on the community's subsistence uses.

*Id.*, p. 20.

An August 2016 National Park Service Natural Resource Report, however, concluded that the proposed road “could have substantial impacts on subsistence production of affected communities.” Evaluating Differences in Household Subsistence Harvest Patterns between the Ambler Project and Non-Project Zones, Natural Resource Report NPS/GAAR/NRR—2016/1280 (Aug. 2016), p. 41. Addressing the additional outside stresses that road construction could impose upon subsistence resources and the additional competition that the road could create for these finite resources upon which these remote communities are heavily reliant, this report concluded that households in communities currently off the road system could face a potential significant loss of subsistence production after road construction. *Id.*, p. 39-41.

As it proceeds with its review and decision making process, BLM must carry out its obligations under ANCSA and ANILCA to ensure that subsistence uses and access to subsistence resources are protected. As part of this effort, Doyon urges BLM to actively and meaningfully consult with Alaska Native village and regional corporations and engage proactively with rural communities in order to address any concerns regarding potential impacts to subsistence use and access, as well as other matters of importance to local communities.

**F. BLM must meaningfully consult with Alaska Native Corporations.**

As it proceeds with its review and decision making process with regard to the proposed Ambler Mining District access road, it is absolutely critical that the BLM engage in meaningful consultation with affected Alaska Native Corporations, including Doyon—as early as possible and at each step of the process.

In its *Notice of Intent and Extension of Time To Prepare an Environmental Impact Statement for the Proposed Ambler Mining District Industrial Access Road, Alaska*, 82 Fed. Reg. 12119, 12121 (Feb. 28, 2017), BLM stated that it “will consult with . . . affected Alaska Native corporations, in accordance with Executive Order 13175 and other policies. Native concerns . . . will be given appropriate consideration.” In a December 1, 2017 letter from Mark Davis of AIDEA to Doyon President and Chief Executive Officer Aaron Schutt, citing this statement, AIDEA stated, “The Executive Order referenced by BLM in the Notice of Intent deals with U.S. Government relations with Tribes, but BLM has indicated that it will use that order as a basis for consultation with Native Corporations, which in this matter are primarily NANA, Doyon,

Evansville, Inc., and K Corp.” December 1, 2017 letter from Mark R. Davis, AIDEA, to Aaron Schutt, Doyon, p. 6. Unfortunately, AIDEA’s statement understates the mandatory nature of BLM’s consultation obligations to Alaska Native Corporations. It is critical that the mandatory nature of these obligations be clear to the project proponent, Federal permitting agencies, and other stakeholders from the outset, to ensure that Alaska Native Corporation concerns are sought and appropriately considered in the various Federal agency decision making processes relating to this proposed project.

In Executive Order (EO) 13175, *Consultation and Coordination with Indian Tribal Governments*, the President required federal agencies to implement an effective process to ensure meaningful and timely consultation with tribes during the development of policies or projects that may have tribal implications. Tribal consultation is intended to assure meaningful tribal participation in planning and decision making processes for actions with the potential to affect tribal interests. While the AIDEA letter is technically correct that EO 13175 applies specifically to federally-recognized tribal governments, pursuant to Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267, Congress specifically extended these obligations to Alaska Native Corporations, requiring the Office of Management and Budget (OMB) and all Federal agencies to “consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

In accordance with this mandate, in August 2012, the Department of the Interior (“DOI”) issued its Policy on Consultation with Alaska Native Claims Settlement Act (“ANCSA”) Corporations. In this Policy, the Department purported to “recognize[] and respect[] the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCSA Corporations and the Federal Government.” Thus, the Policy states that “[w]hen taking Departmental Action that has a substantial direct effect on ANCSA Corporations, the Department will initiate consultation with ANCSA Corporations.” In recognition that “Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices,” it further commits that the Department will “identify consulting parties early in the planning process and provide a meaningful opportunity for ANCSA Corporations to participate in the consultation policy.” The Consultation Guidelines of the Department’s Tribal Consultation Policy that are incorporated by reference into the ANCSA Corporation Policy thus require BLM to consult as early as possible, beginning at the Initial Planning Stage, and provide that the agency should give at least 30-days’ notice prior to scheduling a consultation, except in exceptional circumstances.

Accordingly, Doyon expects to be engaged by BLM in meaningful consultation throughout each stage of the review and permitting process, and intends to provide further comments and input through consultation and the public comment process. Such consultation should not be limited to group format meetings involving multiple tribes and Alaska Native Corporations, but must provide ample opportunities for one-on-one conversations. While Doyon appreciates BLM’s interest in group meetings for efficiency and other reasons, such meetings are not always conducive to meaningful discussions of Alaska Native Corporation issues and concerns. Alaska Native Corporations have particularized interests that differ from those of tribal entities, and not all Alaska Native Corporations are similarly situated or necessarily share the same interests. Pursuant to Federal law and policy, BLM must ensure that Alaska Native corporations are provided the opportunity to meaningfully participate in Federal

agency decision making processes that could impact our ability to fulfill the purposes for which we were established under ANCSA and to protect and advance the economic, social, and cultural interests of our shareholders.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Schutt', with a stylized flourish at the end.

Aaron M. Schutt  
President and CEO  
Doyon, Limited