

## Appendix E

### Beaver Creek Public Use Easement, Subsistence Easement, and Non-Development Easement

ESTABLISHMENT OF BEAVER CREEK PUBLIC USE EASEMENT AND U.S. FISH AND WILDLIFE SERVICE RESERVATION OF AUTHORITY WITHIN THE EASEMENT AREA

EXCEPTING AND RESERVING TO THE UNITED STATES from the Lands so granted the following:

1. A public use easement (“Easement”) of approximately \_\_\_\_\_ acres along each bank of Beaver Creek for use by the general public for the following activities: nature observation and photography, hunting, fishing, boating, trapping, camping, hiking, environmental education and interpretation, and other related activities, and the authority of the United States to restrict or prohibit such public use in accordance with and subject to the same restrictions and regulations as are applicable to the general public when it uses the Yukon Flats National Wildlife Refuge in the same manner. The Easement shall be the full length of Beaver Creek lying within the Lands and extend approximately one half mile on each side of the ordinary high water line of Beaver Creek lying within the Lands as more particularly set forth in Exhibit 1 hereto which is herein incorporated by reference.

Provided that up to but not exceeding one-thousand (1000) acres of the Public Use Easement shall upon a written designation by Doyon, its successors or assigns, be temporarily or permanently (as designated by Doyon, its successors or assigns) restricted or closed to the general public by the U.S. Fish and Wildlife Service using procedures set forth in regulations applicable to closures or restrictions on use by the general public of National Wildlife Refuge lands in Alaska; provided that the U.S. Fish and Wildlife Service shall close or restrict access by the general public to lands designated by Doyon, its successors or assigns, only for purposes directly related to oil or gas exploration, development and production such as to (1) cross Beaver Creek by roads, pipelines, bridges or

similar means, (2) to protect the public health or safety or for oil or gas field security, or (3) for other infrastructure needs relating directly to oil or gas exploration, development, or production including without limitation roads, pipelines, well sites, oil or gas field structures, camps or other related facilities; provided further that the closures or restrictions may not prevent the ability of the general public to travel along Beaver Creek at any time of the year using areas not closed or pursuant to the terms of any restriction on use; provided that the total number of acres designated by Doyon, its successors or assigns, for restriction or closure shall not exceed a total of one-thousand (1000) acres at any one time and that such closures shall be vacated upon request by Doyon, its successors or assigns and the acreage of such vacated closures shall not be counted; and provided further that the limitation on the number of acres subject to closure or restriction shall not apply to closures and restriction by the United States not made at the request of Doyon, its successors or assigns, and provided further that a request from Doyon, its successors or assigns, for a restriction or closure will not be unreasonably denied by the United States.

Provided further that except for the four cabins permitted to Robert L. Croskrey under Fish and Wildlife Service Special Use Permit Number 0207-C7-CroskreyR-YF located within (cabin 1) N. 1/2 of section 34, T14N, R7E; (cabin 2) S 1/2 section 7, T14N, R8E; (cabin 3) N 1/2 of section 31, T 13 N, R 7E, (cabin 4) section 26, T 15 N, R 6 E, Fairbanks Meridian, the public use of the lands authorized hereby does not include the authority of the United States to issue permits for the construction or use cabins, tent platforms, or similar established camps for commercial operators or others. This limitation does not prohibit overnight camping or other uses of the lands by commercial operators in common with the general public.

2. The authority to regulate the following activities on the area of the Easement described above: a) The use of fixed-wing aircraft and helicopters in accordance with the laws and regulations applicable to the use of fixed-wing aircraft and

helicopters on the Yukon Flats National Wildlife Refuge; provided that the authority to regulate the use of fixed-wing aircraft and helicopters shall not apply to the use of fixed-wing aircraft and helicopters by Doyon, its successors or assigns, which use is directly related to oil or gas exploration, development or production. b) The use of off-road vehicles in accordance with the laws and regulations applicable to the use of off-road vehicles on the Yukon Flats National Wildlife Refuge; provided that the authority to regulate the use of off-road vehicles shall not apply to the use of off-road vehicles by Doyon, its successors or assigns, which use is directly related to oil or gas exploration, development or production. “Off-road vehicle” has the same meaning as the definition of “off-road vehicle” in 50 CFR § 36.2 (2004). c) The construction, use, installation, occupancy or maintenance of any building, pier, dock, fence, wall, bridge or other structure in accordance with the laws and regulations applicable to such activities on the Yukon Flats National Wildlife Refuge; provided that the authority to regulate shall not apply to the construction, use, installation, occupancy or maintenance of any building, pier, dock, fence, wall, bridge or other structure by Doyon, its successors or assigns, which use is directly related to oil or gas exploration, development or production.

3. This Easement is reserved pursuant to Paragraph 3.E. of that certain “Yukon Flats Land Exchange Agreement” entered into effective \_\_\_\_\_, 200\_\_ by and between Doyon, Ltd. and the United States of America, a copy of which may be obtained from either party at the address set forth in this instrument.

## SUBSISTENCE EASEMENT

Doyon excepts and reserves unto itself from the land so granted (the “Lands” as described in Exhibit A to the Special Warranty Deed) the right for all people who are residents within Yukon Flats National Wildlife Refuge, and for all people who are residents of Canyon Village, Rampart, Circle, Central, Venetie, and Arctic Village, Alaska (residents of these communities include all people who live within fifteen (15) miles of the geographic center of those communities) to enter upon the Lands for the purposes of engaging in subsistence uses.

As used herein, the term:

- a. “subsistence uses” means the customary and traditional uses (hereinafter "uses" or "such uses") of wild, renewable fish and wildlife resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of the non-edible by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade; and
- b. "family" means all persons related by blood, marriage, or adoption or any other person living within the household on a permanent basis; and
- c. "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses –
  - (1) for other fish or game or their parts; or
  - (2) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.
- d. "resident" means any person who has his or her primary, permanent home for the previous 12 months within the above-described areas and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented, or leased; location of stored household goods; residence of spouse, minor children, or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Nothing herein shall be construed as (1) permitting the level of such uses of wild renewable resources upon the Lands to be inconsistent with the conservation of healthy fish and wildlife populations, (2) authorizing the taking of any fish or wildlife contrary to the laws of the United States or the State of Alaska, or (3) preventing the Secretary from temporarily closing the Lands to such uses of wild, renewable fish and wildlife resources if necessary for reasons of public safety, administration, or to assure the continued viability of such resources; provided, however,

that nonwasteful subsistence uses of fish and wildlife resources shall be the priority consumptive uses of all such resources on the Lands. When it is necessary to restrict taking, the Secretary shall not limit or preclude such subsistence uses of fish and wildlife on the Lands by residents unless the Secretary has taken all other reasonable actions necessary to remedy the conditions giving rise to the proposed limitations or preclusions, including, but not limited to, the termination of all other consumptive activities on the Lands that contribute to such conditions. The Secretary shall, consistent with his or her other legal obligations, manage the Lands in a good faith manner which acknowledges and seeks to preserve the rights described in this easement. Nothing herein shall be construed to create any fiduciary or trust obligation whatsoever on the part of the Secretary, her or his successors and assigns, or the United States and its assigns with respect to Doyon for the management of the Lands. Nothing herein shall be construed to affect the authority of the State of Alaska to regulate or prohibit the taking of fish and wildlife upon the Lands. Nothing herein shall be construed to affect the authority of the United States to manage the Lands as part of the National Wildlife Refuge System, subject to the terms of this Easement.

This Easement is reserved pursuant to Paragraph 5 of that certain “Yukon Flats Land Exchange Agreement” entered into effective \_\_\_\_\_, 2005 by and between Doyon, Ltd. and the United States of America, a copy of which may be obtained from either such party at the address set forth in this instrument.

F:\DATA\5442\8\Other\ConveyanceDrafts\H-Subsistence Easement clean 12-02-05.doc

AGREEMENT IN PRINCIPLE  
 BETWEEN UNITED STATES FISH AND WILDLIFE SERVICE  
 AND  
 DOYON, LTD.  
 CONCERNING  
 NON-DEVELOPMENT EASEMENT  
 TO BE GRANTED BY  
 DOYON LTD.

In this "Agreement in Principle between the United States Fish and Wildlife Service and Doyon, Ltd. Concerning Non-Development Easement to be Granted by Doyon, Ltd." ("Second Agreement in Principle"), Doyon, Limited ("Doyon") and the United States Fish and Wildlife Service (the "Service") state their agreement on the terms which the parties may choose to substitute for certain terms of a land exchange which they have previously agreed upon. The parties may choose to utilize the modified terms set forth in this Second Agreement in Principle if an alternative incorporating these terms is selected pursuant to the NEPA process currently ongoing in relation to the land exchange the parties are pursuing.

In the "Agreement in Principle – Proposed Land Acquisition and Exchange Between Yukon Flats National Wildlife Refuge and Doyon, Limited", ("First Agreement in Principle"), Doyon and the Service agreed upon a transaction in which Doyon and the Service would conduct a land exchange to provide Doyon title to some lands located within the Yukon Flats National Wildlife Refuge that may hold developable oil and gas resources. In exchange, the Service will receive habitat currently owned by Doyon within the refuge boundary.

As agreed in the First Agreement in Principle, the land exchange had two phases. Phase I consisted of an equal value exchange of certain lands. Phase II would be implemented if Doyon finds and chooses to develop oil and/or gas resources on the lands acquired by the initial exchange. In Phase II, the Service would establish the "Alaska NWR Land Acquisition and Facility Account" and Doyon would pay into this account a production payment of 1.25% of resource value at the wellhead for all oil and gas extracted from lands and interests acquired through this agreement. The service would use these funds to: (1) acquire additional lands within the Yukon Flats NWR; (2) acquire other lands from willing sellers within Alaska refuges; and, as a second priority, construct facilities for Alaska refuges.

In the modification hereby agreed in principle by the parties (but not yet agreed to be implemented), the parties agree that in place of the foregoing structure, Doyon and the Service would (i) engage in the Phase I value for value exchange, and (ii) in place of (X) entering into Phase II, (Y) establishing the account and (Z) making the production payments if oil and gas are discovered, the parties instead agree that at closing, Doyon would grant the Service a Non-Development Easement as to any remaining Doyon lands not consumed in Phase I. This will ensure that the Service obtains a present, valuable benefit from the remaining lands, and removes the uncertainty that the Service would receive no further benefit from Phase II due to the possibility that oil and gas would never be discovered.

The terms of the Non-Development Easement are as follows:

Doyon will allow no commercial or industrial development of any of the lands subject to the Non-Development Easement, including no professional guiding, no hotels or commercial lodges, no mining, and no oil or gas development.

Except as limited by the foregoing, Doyon will be allowed to use the land, and to authorize the use of the land by Doyon shareholders and the descendants and family members of Doyon Shareholders, in all respects as other Doyon lands, including as follows:

- Hunting and fishing, as long as pertinent game hunting and fishing laws, including the subsistence laws are followed and responsible temporary camp maintenance is practiced;
- The gathering of berries, wild fruits, roots, fungi, mushrooms, and other edible natural foods;
- The cutting of live trees on Doyon fee land by Doyon shareholders for the construction, addition or reconstruction of personal and immediate family primary residence on personal property. No cutting will occur within the immediate vicinity of any cultural resources, including the right to cut a sufficient amount of house logs to build one residential structure and other related outbuildings at a site, and up to ten (10) cords of firewood annually for the personal non-commercial use;
- Traplines and trapping cabins and trapline camps with necessary associated facilities as long as pertinent game laws, including the subsistence laws, are followed, and that responsible temporary camp maintenance is practiced;
- Personal, group or community gardens on suitable lands so long as the garden is for personal or community benefit and is noncommercial in nature;
- Fish camps for personal use.
- establish cabins for traditional activities, such as, but not limited to, hunting, fishing, and trapping, including shareholder homesites.
- The use of Doyon lands for the location of a dog pound where the owner of the animals is the holder of the permit.
- The use of Doyon lands for the location of a subsistence garden.