



5019 – 52nd Street
Yellowknife, NT – X1A 1T5

JUN 10 2016

VIA EMAIL

Chief Peter Marcellais
Nahæâ Dehé Dene Band
General Delivery
Nahanni Butte, X0E 0N0

RE: Nahanni Butte Dene Band – Indian Affairs Branch Lands and the Canadian Zinc Prairie Creek All-Season Road

Dear Chief,

Thank you for taking the time to meet with officials from the Government of Canada and the Government of the Northwest Territories as well as the Canadian Zinc Corporation in your community on June 3, 2016. A commitment was made during this meeting to provide you with further information on your rights with respect to the management of Indian Affairs Branch ("IAB") lands and how the Nahanni Butte Dene Band ("NBDB") can manage these lands in the context of the Canadian Zinc Corporation's proposed Prairie Creek All Season Road (the "Project") which traverses these lands. The Canadian Northern Economic Development Agency's Northern Projects Management Office, as federal coordinator for the Canadian Zinc All-Season Road environmental assessment ("EA"), is pleased to provide the following response. In addition, I have attached a document which outlines general guidelines on IAB lands as well as a map of the Project and NBDB's IAB lands.

As discussed, the IAB lands are Federal Lands reserved by the Department of Indigenous and Northern Affairs Canada for the use of the NBDB. NBDB and CanZinc will have to determine what use will be made of the lands, the terms and conditions of that use, and what if any legal interest in those lands that CanZinc will be granted. If NBDB and CanZinc decide that any legal interest is to be granted (either by way of a lease, licence of occupation, easement, or other interest) in order for CanZinc to build and operate the road and for NBDB's rights and concerns to be addressed, then that legal interest would have to be granted by Canada. If Canada were to grant a legal interest of any sort in the lands, we would require a Band Council Resolution (BCR) from NBDB which outlined the Bands agreement to the granting of the legal interest. This BCR would also need to include any terms and conditions which the Band might deem necessary to protect their rights and address their concerns. Canada would consult with NBDB with respect to any legal interest that might be granted in the lands. In addition, we strongly urge NBDB to obtain their own independent legal advice with respect to the use of the lands by CanZinc and the potential granting of any legal interest in those lands. The various options for use of the lands each have their own benefits and obligations, and NBDB will need to determine which option best fits its needs. Canada can assist with this analysis if NBDB so requests.

Should the Project proceed to construction, NBDB has the right to monitor the use of and control access to the IAB lands through the use of a gate or security point or other means deemed by NBDB. How this occurs can be addressed in an agreement between NBDB and CanZinc, as well as in any instrument provided by Canada which grants CanZinc a legal interest in the lands. However, CanZinc will maintain a legal right to access their mineral claims block. It is important to note their access cannot be denied. Federal and Territorial Government Departments also have the right of access through and within the IAB lands with respect to any applicable legislation such as but not limited to the right to inspect the lands under the *Territorial Lands Act*. Additionally, any agreement for the use and occupation of the lands will have to take into account any Section 35 Aboriginal or Treaty rights which may be exercised on the lands (such as hunting, trapping, or harvesting).

As discussed at the meeting, it is in the community's best interest to ensure any concerns it has around the impacts of the CanZinc's proposed all-season road on the community, its potential or established Aboriginal and/or Treaty rights, wildlife, and the environment are formally documented through the environmental assessment process conducted by the Mackenzie Valley Environmental Impact Review Board (Review Board) for the all-season road. As noted in our letter dated June 5, 2014, we encourage your continued participation throughout the environmental assessment including at the technical sessions being held in Yellowknife June 13-16, 2016 and any meetings that may be held in the community or elsewhere. The Review Board can only assess information presented to them to enable them to understand any significant impacts to the environment and recommend mitigation measures should the Project be approved.

Should you have any further questions as it relates to the Project and / or the environmental assessment process, please contact Sarah Robertson, Project Manager at 867-669-2601 or by email at Sarah.Robertson@CanNor.gc.ca.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MS', with a long horizontal flourish extending to the right.

Matthew Spence
Director General
Northern Projects Management Office

Attachments: (1) IAB General Information and Backgrounder
(2) Map of NBDB IAB Lands and the Project

cc. Paula Harker, A/Assistant Deputy Minister, Planning and Coordination,
Department of Lands, Government of the Northwest Territories

Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental Impact
Review Board

Alan Taylor, Chief Operating Officer and Vice President, Exploration, Canadian
Zinc Corporation

Information and Background

LAND "RESERVED" FOR INDIAN AFFAIRS BRANCH (IAB)

* Indian Affairs Branch is now known as Indigenous and Northern Affairs Canada (INAC)

Prior to the devolution of land and water responsibilities to the Government of the Northwest Territories on April 1, 2014, Indigenous and Northern Affairs Canada (INAC) managed or administered "territorial lands" as defined in the *Territorial Lands Act*.

Within community boundaries, some of these lands were "reserved" in the name of the Indian Affairs Branch (IAB), for the use of aboriginal people. This "reserve" is **not** the same as an Indian Reserve established pursuant to the *Indian Act*, however, these lands are commonly referred to as "IAB Reserves", or "IAB Reserved Land".

Prior to the completion of the Devolution Agreement, lands identified as IAB Reserves were placed on an Exclusion List, and were not transferred or devolved to the Government of the Northwest Territories on April 1, 2014.

An "IAB Reserve" or any reserve on territorial lands would have been created pursuant to a 1955 Cabinet Directive that gave INAC authority to establish reserves in the name of other federal government departments who identified a need for lands in the Northwest Territories. These "IAB Reserves" are managed and administered by INAC.

The Cabinet Directive gave INAC the authority to "set aside" lands required by other federal government departments (because the Territorial Lands Act does not allow for disposal of land to another government department by way of lease or sale. i.e. disposal). Further, the Directive does not require INAC "manage" these lands on their behalf, it requires INAC to make a record of the other government department's occupancy of that land.

Since lands "reserved" by INAC pursuant to the 1955 Cabinet Directive, or lands "reserved" by the GNWT pursuant to the *Commissioner's Land Act*, are not the same as reserves established pursuant to the *Indian Act*, provisions in the *Indian Act* such as exemption to pay taxes, or rental are not applicable, so it makes no difference whether the reserve is on Federal Crown or Commissioner's land, taxes and rents are still payable to the Receiver General for Canada if those lands are subsequently released from reserve status and a lease granted.

Lands reserved pursuant to the Cabinet Directive in the name of IAB are normally managed separately from other community lands, by the Resource and Land Management staff of INAC. All other territorial lands reserved pursuant to the Cabinet Directive in the name of other government departments, are managed by the Land Administration office of INAC.

Since INAC manages, administers and controls territorial lands, it also manages, administers and controls lands that are reserved in the name of IAB through its Resource and Land Management. "Disposition" of these lands normally occurs as follows (by arrangement between IAB and the Band):

1. Someone wishes to lease or occupy a lot that is reserved in the name of IAB.

2. The applicant must approach the Local Band and obtain a Band Council Resolution (BCR) that gives them 1) permission to occupy the land; or, 2) to obtain a lease from INAC Land Administration.
3. Once the BCR is obtained, the applicant must then fill out an application for Crown Land (ONLY if the BCR authorizes the issuance of a Lease), and the Band should forward this to the IAB Office in Yellowknife with their recommendations.
4. The IAB Office reviews the BCR (completeness, accuracy, and they must ensure the land is reserved, ensure the Band has a quorum etc.), then they forward it to the Manager of Land Administration with their recommendations.
5. INAC Land Administration will act on the application based on the BCR and IAB's recommendations. If the BCR is incomplete, or incorrect as a result of Land Administration's review, it will be returned to the IAB Office with a memo or letter outlining the problems and the memo will also recommend a course of action to IAB in dealing with the incorrect BCR. **NOTE:** If the BCR authorizes the applicant to obtain a lease on the property, the BCR must say that the Band relinquishes its interest in the reserved land.

IAB must also confirm that the land reservation can be cancelled (since it is in their name) and a lease issued to the applicant.

It is important to note that once lands are released from a reserve, and a lease issued to an individual, the Band and IAB no longer have any type of management, administration or "control over the lands, because in order for a lease to be valid, it must grant exclusive possession of the property to the lessee. If a lease is issued with conditions placed on it that clearly do not grant exclusive possession, no lease is created in Law.

Once a lease is issued pursuant to the Territorial Lands Regulations, INAC must charge a rental for the land, as the regulations at section 11(1) state: "*The annual rental payable under any lease other than a grazing lease **shall** be not less than 10 per cent of the appraised value of the lands leased.*" Rental is not discretionary, it is mandatory, unless waived by an order of the Governor in Council.

In contract law (a lease is a contract), there must be some form of consideration (rental), or it would not be a valid contract.

Every lease of territorial lands also has a term within it that states the lessee is responsible to pay all rents and taxes assessed in or upon the lands. When the lessee signs the contract, they are accepting the legal obligation to pay those rents and taxes. If they disagree with those terms, they can choose to not enter into a lease with the Crown, however this could jeopardize their obtaining financial assistance to build their home, as a lending institution will not approve a mortgage if they cannot register their mortgage against an interest in the land. A lease creates an interest in land, and a reserve does not.

Once a lease is issued, the lessee has certain regulatory rights, such as being able to assign, or mortgage their interest in the land. If the lessee were to obtain a mortgage to finance their construction, and they default the terms of their mortgage, the Financial Institution (Mortgagee) can take over (foreclose) the leased land and chattels (improvements), and could sell the property to anyone they choose, to recoup their costs. The land does not automatically revert to IAB reserve status if the lessee defaults under the

terms of the lease, and it is cancelled or otherwise terminates (such as being subject of a foreclosure action).

If the Band only wishes to grant permission to occupy (PTO) to an individual, they should pass a BCR stating the occupant's name, lot number (or if unsurveyed, attach a sketch), location, etc. The BCR must expressly say that only permission to occupy is being granted. The BCR might also address the length of occupancy, rights of heirs etc., to ensure proper use of the land by the authorized persons.

The above PTO should be forwarded to IAB who should note the occupancy in their records. INAC's Land Administration Office does not require a copy of these BCR's if there is no disposal of land taking place. A PTO does not grant any rights to the land, but allows a person to use it; therefore, no disposal of land takes place.

For Information/Discussion purposes only.

PRAIRIE CREEK ALL SEASON ROAD

- Legend
- LOT
 - Nahanni Butte
 - Nahanni Butte

Nahanni Butte
Nahanni Butte



3 km