

**Meeting Summary**  
**Non-Parks Canada Administered Sections of Prairie Creek Access Road**  
**Monday July 26, 2010**  
**6th Floor Board Room, Bellanca Building**  
**Time: 1:30 to 3:30**

**Participants:**

Nahanni Butte (NDDB\*): Chief Fred Tesou, Peter Redvers (Crosscurrent Associates Ltd.)

Canadian Zinc (by phone): David Harpley

GNWT: Larry Purcka (DoT), Bev Chamberlin (observer – MACA), Amy Jenkins (ENR)

INAC: Darnell McCurdy (Operations), Darha Phillpot (CSU), Patrick Tomlinson (P&P), Malcolm Robb (MDD)

**1. Facilitator's remarks and introductions**

Patrick Tomlinson provided welcoming remarks, reviewed the agenda and discussed ground rules for the meeting.

**2. Purpose of the meeting**

The meeting was called to address NDDB's concerns about the impacts that unrestricted access to non-Parks Canada administered sections of the Access Road may have to their treaty right to hunt and the community's interest in restricting use of the road to protect wildlife and cultural areas. NDDB is concerned that unrestricted road access may impact its members' Aboriginal and treaty rights by encouraging overharvesting of key species such as woodland caribou, mountain sheep, and moose along the road corridor. Canadian Zinc also requested the meeting as they also have concerns about road access and road safety. The purpose of the meeting was to consider these concerns, to bring clarity to jurisdiction of the Access Road, and consider possible options. The intent was to bring together parties who have an interest or information on the issue, to develop a shared understanding of the facts and issues, and to brainstorm steps forward. The meeting did not focus on the portion of the Access Road within the Park Boundary, where Parks Canada will be administering the road under the Parks Canada Act. It was noted that Parks has committed to restrict access to the portion of the road within the Nahanni National Park Reserve. A written summary will be provided to MVEIRB for the public registry.

**3. NDDB concerns**

Chief Tesou and Peter Redvers provided an overview of NDDB concerns about uncontrolled access to the road by hunters, both non-Aboriginal and Aboriginal from outside the NWT (e.g., winter snowmobile and truck traffic and ATV in the summer). Concerns relate to the proposed new road alignment once opened and also residual access to the existing alignment. Potential impacts include overharvesting of sheep populations near Second Gap and moose and woodland caribou populations along the eastern section of the road; and disturbances to culturally sensitive lands and cultural artifacts. NDDB wants to control access to the road. Possible control over various sections of the road was discussed:

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- Where the road crosses over community lands – MACA & INAC (Operations) noted that until there is a land claim settlement, the section that crosses community lands is no different than any other Crown land.
- Where the road crosses IAB lands (near Tache) – MACA noted that IAB lands are “lands set aside for Indians” for *housing*. Administered by the federal government, IAB lands are of special notations indicating that they are available for housing (Aboriginal), administered by the Band, held communally for the benefit of all Band members. If the land use is other than housing, the land would likely lose its special designation as IAB land.
- The original mine access road – Chief Tesou noted that the existing alignment from the Highway to Second Gap is currently being accessed by ATV. David Harpley noted that parts of this alignment may be in use, but much of it is unlikely to be because large sections have completely regrown (e.g., from Liard River to Grainger River crossing).

#### **4. Canadian Zinc’s remarks**

- CanZinc also wants to control road access because of possible hunting pressures and safety concerns during the busy winter haul season. Control and monitoring is essential to know what vehicles are on the road at all times during winter operations.
- CanZinc currently holds a permit for the winter road from the Liard Highway at Lindberg landing to the mine site. Road realignment is being considered for the following reasons:
  - o Lindberg Landing’s concerns with traffic
  - o better terrain/ground stability
  - o NDDDB’s concerns with crossing wetlands of the Grainger River area
  - o closer proximity to Nahanni Butte to facilitate NDDDB road monitoring
  - o NDDDB feels it will increase community employment opportunities (e.g., easy access to work at the transfer station and road monitoring).
- CanZinc wants to deter third parties that are not involved in mine business using the road.

#### **5. The legislative and policy context for access roads in the NWT**

- In 2004, after CanZinc had applied for a lease for the road, INAC notified CanZinc that a land lease for the road was not possible and that the company would only be able to get a licence, also known as a licence of occupation (LOC). INAC’s position has not changed.
- INAC does not have jurisdiction to provide a lease for roads in the NWT, although INAC does have authority to issue and administer a LOC, under the *Federal Real Property and Federal Immovables Act*. A LOC does not grant exclusivity. Without exclusivity INAC cannot limit public access to Crown lands; The public has the right to access Crown lands.
- Jurisdiction for existing roads in the NWT is pursuant to the *Commissioner’s Land Act*. INAC (Operations) and GNWT-MACA are in discussions about the future of road administration and control in the NWT. It is too soon for MACA to know what policy might be adopted regarding road access.

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- The road route near the community passes over lands withdrawn from disposition by way of Order In Council (OIC) for the Dehcho Process. INAC cannot issue a lease to anyone, including NDDDB, on withdrawn lands.
- NDDDB could explore the option that a portion of the Access Road, if it passes through selected lands, be designated as private, once the Dehcho Process has concluded and selected lands are appropriately transferred.

## 6. Collaborative brainstorm of ways to address concerns

Options to address concerns that do not require a road lease were explored:

- Control or restrict access on Community Access Road (i.e., portion of the road from where the Access Road meets the NB community access road to the Liard Highway). However, the community highway is a public highway under the *Public Highways Act*. No options were identified to control access on this section.
- Old Nahanni Logging Road. This abandoned section of road remains Federal Crown Land and is within the interim land withdrawal area, so it is considered public lands but no form of lease can be issued on it. The road's connection to the community access road does not affect its status.
- Option of NDDDB, through the Dehcho Process, selecting parcel of land along the right of way, or using the portion of the road that will pass through community owned lands, in order to control access once the Dehcho Process is settled. This option was not considered feasible in the short term as a settlement appears to be several years away.
- Option of NDDDB applying to INAC for a lease for land (without prejudice to the Dehcho process), adjacent to the road and outside of the withdrawn area near Bluefish Lake. NDDDB proposed a lease based on economic opportunities, tied into monitoring access to the road. This option will be further explored by INAC and NDDDB. CanZinc and NDDDB will also continue to discuss road routing as more detailed geotechnical work is completed, and before a precise final route is decided.
- Options to implement some form of restriction on hunting in the area. Various instruments were discussed, including: GNWT Draw System, a hunting ban, and using the *Area Development Act* to create a no shooting corridor similar to the one in place for the Ingraham Trail. Drawbacks/challenges to this approach include: (1) hunting restrictions that address only non-Aboriginal hunters won't address NDDDB's concerns which include impacts from non-NDDDB Aboriginal hunters; (2) lengthy s. 35 consultation process associated with hunting bans; (3) a strong case is required to set a harvesting limit, including data that a species is at risk, and; (4) Some NDDDB members do not want any restrictions on their own hunting rights. NDDDB's major concern is harvesting with the use of heavy vehicles – it feels restricting road access is most appropriate mitigative measure.
- Road Monitoring Options. Although access cannot be restricted, and people cannot be forced to stop, a monitoring checkpoint could be created to monitor the entrance and exit of vehicles to the road. This would allow some indirect monitoring of harvesting, and an opportunity to advise people of safety issues. The Company can put signs and undertake communications efforts about road safety, and the Company was advised to clarify that CanZinc would not be held responsible in the event of an accident (road

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use is at the user's own risk). Further discussions on how monitoring can be done are warranted.

### **Other Business**

- Remediation of the Grainger camp along the existing alignment (old fuel tanks and contaminated soil). Although CanZinc is not legally accountable for the camp (it was established by Cadillac), CanZinc has offered to remediate the site. If the proposed realignment is approved, CanZinc will build a short tote road off of the proposed road to the camp (enough to get a few vehicles into the camp and pick up the soil and take away the tanks and unused culverts).
- Chief Tesou requested a follow up meeting in Nahanni Butte to allow the community to hear directly from officials regarding the road access issue.

### **Next Steps:**

- INAC will do a preliminary review of land lease option near Bluefish Lake -- INAC will forward relevant federal legislation relating to land leases to Crosscurrent Associates for NDDB. (complete as of August 23, 2010)
- INAC will develop and share a more detailed map for the Bluefish Lake area where NDDB may be interested in pursuing a lease, if feasible and without prejudice to the Dehcho Process. (complete as of August 23, 2010)
- INAC will provide a meeting summary to the MVEIRB once approved by all parties to the meeting.
- INAC will consider NDDB's request for a fall Community Meeting to discuss this matter further directly with the community.
- INAC will follow up with Parks Canada regarding future discussions about the entire access road (i.e., Parks Canada and non-Parks Canada administered portions).

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