



DENINU K'UE FIRST NATION

P.O. Box 1899

Fort Resolution, NT X0E 0M0

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January 11, 2012

Ms. Shirley Standafer-Pfister
Manager, Regulatory & Environmental Affairs
Peregrine Diamonds Ltd.
201-1250 Homer Street
Vancouver, BC V6B 1C6

Dear Ms. Standafer-Pfister:

It has come to the attention of the Deninu K'ue First Nation (DKFN) that officials of Peregrine Diamonds Ltd. have contacted the Hamlet of Fort Resolution regarding the crown's constitutional obligation to consult on potential impacts of our constitutionally protected Section 35 rights through our Treaty. This letter is to clarify for you that any such consultation regarding the potential impacts upon the exercise of the aboriginal and treaty rights of members of DKFN in our traditional territory must be conducted with the Chief & Band Council of DKFN, and not with the Hamlet of Fort Resolution. I will provide some background information to support our position.

The Supreme Court of Canada has clearly indicated that where the aboriginal or treaty rights of a First Nation are or may be affected, that First Nation must be consulted by the Crown prior to any action being taken or authorized by government. This is a constitutional right.

Members of DKFN are descendants of the signatories to Treaty 8 made on July 25, 1900 at Deninu K'ue. Members of DKFN currently have existing aboriginal and treaty rights in Akaitcho Territory. These aboriginal and treaty rights include among others, the right to hunt, fish, trap and gather in Akaitcho Territory. The aboriginal and treaty rights of the DKFN have been exercised by members of DKFN for generations, and continue to be exercised to date.

Accordingly, if the proposed actions of any development through the Mackenzie Valley Land & Water Board (MVLWB) that will or may affect the exercise of the aboriginal and

treaty rights of members of DKFN, consultation and if appropriate, any necessary accommodation of our interests with the Chief & Band Council of DKFN must be addressed as part of the review process.

The Hamlet of Fort Resolution is a hamlet. A hamlet is a municipal corporation with the status of a hamlet established or continued under the *Hamlets Act*, S.N.W.T. 2003, c. 22, Sch. C. The purposes of a hamlet are set out in s. 3 of the *Hamlets Act*, which reads as follows:

3. Hamlets are established for the following purposes:
 - (a) to provide good government to the residents of the municipality;
 - (b) to develop and maintain a safe municipality; and
 - (c) to provide the services, products and facilities required or allowed by this or any other enactment or considered by a council to be necessary or desirable for all or part of the municipality.

The jurisdiction of a hamlet is restricted to those powers specifically granted it by legislation. Section 4 of the *Hamlets Act* reads as follows:

4. (1) The general legislative powers of a hamlet to make bylaws are to be interpreted as giving broad authority to council to govern the municipality in whatever way council considers appropriate, *within the jurisdiction given to a hamlet under this or any other enactment*, and to address issues not contemplated at the time this Act is enacted.

You will notice that the purposes and legislative authority of a hamlet relate to the provision of municipal type services. These include services include such items as water delivery, garbage collection, road maintenance and the like. This is established in s. 60 of the *Hamlets Act*, which reads as follows:

60. (1) A hamlet may, for a municipal purpose, establish, deliver and operate services, public utilities and facilities.

The general legislative powers of a hamlet are itemized in s. 72 of the *Hamlets Act*, which reads as follows:

72. (1) In addition to any power to make bylaws in any other enactment, council may make bylaws for municipal purposes respecting
 - (a) the safety, health and welfare of people and the protection of people and property;

- (b) people, activities and things in, on or near a public place or a place that is open to the public;
- (c) public nuisances, including unsightly property;
- (d) transport, motor vehicles, pedestrians and local transportation systems;
- (e) the management, use and protection of lands, including land use planning in accordance with the *Planning Act*;
- (f) businesses, business activities and persons engaged in business;
- (g) public utilities;
- (h) programs, services, infrastructure and facilities provided or operated by or on behalf of the hamlet;
- (i) domestic and feral animals and activities in relation to them;
- (j) the operation and internal management of the hamlet; and
- (k) the enforcement of bylaws.

Furthermore, subject to certain exceptions which are not relevant in the present circumstances, the jurisdiction or legislative authority of a hamlet is limited to the geographical boundary of the hamlet. This is made clear in s. 73 of the *Hamlets Act*, which reads as follows:

73. (1) Subject to subsection (2), a bylaw applies only inside the boundaries of the municipality.

You will also notice that the purpose or jurisdiction of a hamlet does not include or in any way relate to the representation of the residents of the hamlet with respect to the Crown's constitutional obligation to consult regarding potential impacts upon the exercise of the aboriginal and treaty rights of members of a First Nation, just because they happen to be resident in a hamlet. This is not surprising given that the Supreme Court of Canada has indicated that consultation regarding the potential impacts upon the exercise of the aboriginal and treaty rights of members of a First Nation must be conducted with the lawful government of that First Nation. Accordingly, the Hamlet of Fort Resolution has no jurisdictional base or authority whatsoever to represent or speak for or on behalf of DKFN or its members with respect to the Crown's constitutional obligation to consult. All such consultation and accommodation, if warranted, should occur with and only with the Chief and Band Council of DKFN.

Finally, please accept this as formal notification that DKFN wishes to be consulted according to law with respect to any and all proposed actions of Peregrine Diamonds Ltd. which may impact upon the exercise of the aboriginal and treaty rights of members of DKFN resident in Deninu K'ue. As well, DKFN wishes to have its interests

accommodated for any infringements upon its aboriginal and treaty rights which are occasioned by any such proposed action in our traditional territory.

In closing, we cannot sit idly by while Peregrine Diamonds Ltd. continues to engage with the Hamlet of Fort Resolution on matters related outside the hamlet's jurisdiction to the MVLWB process because they may be on their distribution list. I would be please to respond to any questions you may have regarding DKFN's position on this matter.

Thank you for your consideration and we look forward to your reply. Mashi Cho.

Sincerely yours,



Chief Louis Balsillie

c: ✓ Mr. Willard Hagen
Mr. Don Balsillie
President Garry Bailey
Minister Robert C. McLeod
Minister John Duncan
Mr. Richard Edjericon
President Garry Bailey
Mayor Garry Bailey

Mackenzie Valley Land & Water Board
NWT Treat 8 Tribal Corporation
Fort Resolution Métis Council
MACA/GNWT
AANDC/Canada
MVEIRB
Fort Resolution Métis Council
Hamlet of Fort Resolution



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FACSIMILE TRANSMITTAL SHEET

TO: Willard Hagen FROM: Chief Louis Balsillie
 COMPANY: MVLWB DATE: January 11, 2012
 FAX NUMBER: 873-6610 TOTAL NO. OF PAGES INCLUDING COVER: 4 incl cover
 PHONE NUMBER: 669-0506 SENDER'S REFERENCE NUMBER:
 RE: DKEN jurisdictional community engagement YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

ATTENTION:

As per correspondence

Mackenzie Valley Land
& Water Board

File

JAN 11 2012

Application # MV2011C0005

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