

ATTACHMENT 4

Regulatory Correspondence

(27 Pages)



P.O. Box 2101
Ikaluktutiak, NU X0B 0C0
867-983-4625
867-983-4626

Dear Ms. Williston, Mr. Bathory, Ms. Hanson

Re: DFO NU-07-0050 NIRB File08MN053 Baffinland Iron Mine Early Revenue
Phase (ERP) Curran CD May 14

The Nunavut Planning Commission (NPC) issued a conditional positive conformity determination on August 13, 2013 for the above noted project proposal. Those conditions were: (1) the joint review process for the proposed transportation corridor provided in section 3.5.12 of the North Baffin Regional Land Use Plan (NBR LUP) is completed, (2) the NPC makes a recommendation to the Ministers on whether to amend the plan, and (3) the Ministers determine whether to amend the plan. The three conditions in the NPC's August 13, 2013 conditional conformity determination letter have now been satisfied as explained below.

The NPC and the Nunavut Impact Review Board conducted public reviews under section 3.5.12 of the NBRLUP. The NPC received and reviewed various documents, comments, and submissions, and posted these online in its public record of the review, which included but was not limited to the following:

- Mary River Project Final Environmental Impact Statement (February 2012);
- Department of Fisheries and Oceans Canada application (June 2013);
- Addendum to the Final Environmental Impact Statement (June 2013);
- NPC / NIRB Public Review Records regarding the BIMC ERP Proposal;
- NIRB's Final Report – BIMC ERP proposal (March 2014);
- Responses to the informational requests related to the Mary River project; and
- Submissions related to the NPC's public review of the ERP.

After its public review process was complete, the NPC drafted Amendment No. 2 to the NBRLUP and sent a letter to the federal and territorial Ministers on April 14, 2014, stating that the BIMC Mary River Project ERP proposal and application to amend the NBRLUP had satisfied the requirements in section 3.5.12 of the NBRLUP, and recommending the amendment. Both Ministers wrote to the NPC on April 28, 2014 approving of Amendment No. 2 to the NBRLUP to show a new Milne Inlet Tote Road and Marine Transportation Corridor from the Mary River Project location to Milne Inlet and North from Milne Inlet and then East through Eclipse Sound to Baffin Bay to the eastern extent of the land-fast ice zone. Amendment No. 2 came into effect when it was approved by the Ministers.

The NPC has completed its review of the above noted project proposal. It conforms to the amended NBRUP, subject to the applicant's ongoing compliance with the conformity requirements listed in the attached undertaking. The authorizing agencies to

AUGUST 9, 2013
NUNAVUT PLANNING COMMISSION
REVISED APPLICATION TO DETERMINE CONFORMITY
WITH THE NORTH BAFFIN REGIONAL LAND USE PLAN

All applicants for a project proposal shall comply with the requirements listed below.
The relevant sections of the plan are noted in each requirement.

- 2. Environmental Protection:** s3.13.8: The applicant undertakes to prevent any new occurrences of pollution, garbage and contamination at the site of the development.

☒ Yes

No

- 3. Removal of Fuel Drums:** s3.13.8: The applicant undertakes to remove all drums safely from the site and dispose of the drums in a safe manner.

☒ Yes

No

- 4. New Site Restoration and Clean Up:** Appendix H, s1: The applicant undertakes to clean up the site and restore the site to its natural condition to the greatest extent possible.

☒ Yes

No

- 5. Old Site Restoration and Clean Up:** s3.13.2 and Appendix H, S1: The applicant undertakes to clean up the site and restore the site to its original condition to the greatest extent possible, including any work required due to the applicant's action prior to this application.

☒ Yes

No

- 6. Low-Level Air Flights:** Appendix H, s3: Will the applicant avoid all low-level flights?

☒ Yes

No

- i. If not, explain why such flights are or may be absolutely necessary.

Low level flights will be avoided to the extent possible and subject to safety considerations during poor weather and or visibility.

- ii. If such flights are or may be absolutely necessary, will they avoid disturbance to people and wildlife?

☒ Yes

No

Mitigation measures for aircraft flights have been assessed and approved under Project Certificate No. 005. All mitigations are subject to safety considerations.

- iii. If not, explain why it is not possible to avoid such disturbance.

7. **Caribou Protection Measures.** s3.3.7 and Appendix I: Will the applicant comply with the Caribou Protection Measures outlined in section 3.3.7 and in Appendix I?

☒ Yes

No

9. **Polar Bear Denning Areas and Walrus Haul-outs:** s3.3.8: Will the applicant keep its activities away from any polar bear denning area or walrus haul-out?

☒ Yes

No

HERITAGE RESOURCES

10. **Reporting of Archaeological Sites:** s3.11.3 and Appendix H, s2 and s8: Will the applicant immediately report the discovery of all suspected archaeological sites to the Department of Culture and Heritage (GN)?

☒ Yes

No

MINING

11. **Mining Development:** s3.6.5: Is the proposal for mining development?

☒ Yes

No

If yes, include with the application a mine closure and restoration plan and the proof of complete financial guarantees for the abandonment and restoration of the site.

The Preliminary Mine Closure and Reclamation Plan which was Appendix 10G of the Final Environmental Impact Statement, has been approved by the Nunavut Water Board under Part B, Section 14 of the Water Licence issued June 12, 2013 (the Water Licence is still pending approval by the Minister). Subsequently, the Interim Abandonment and Reclamation Plan is provided in the Addendum to FEIS as Appendix 10G. The Plan

includes a closure and reclamation plan for all aspects of the Mary River Project including the mine site, and Milne Inlet.

The Water Licence also includes, as Part C, conditions applying to security under which the initial total security amount of approximately \$36 million to cover closure and reclamation of the current works and undertakings. The Water Licence provides for an Annual Security Review as set out in Schedule C of the Water Licence and will require Baffinland to provide an updated Abandonment and Reclamation Plan on an annual basis along with a calculation of security for the highest level of reclamation liability for land and water for the upcoming year. Additional security will be posted annually as necessary. Currently, as shown in Attachment 3, a Letter of Credit (LOC) has been issued in favour of the Qikiqtani Inuit Association in the amount of \$26,200,000.00 and a second LOC has been issued in favour of Aboriginal Affairs and Northern Development Canada in the amount of \$6,738,216.00. As per Part C, Item A of the Type A Water Licence issued by the Nunavut Water Board to the Minister, Baffinland will be required to post additional credit of \$4,311,784 once the Type A Water Licence is issued. The total of all LOC's would cover all security costs associated with planned activities in 2013.

The ERP, if approved by the Nunavut Impact Review Board, will be a modification of the Mary River Project and the above requirements for the Abandonment and Reclamation Plan and for security will continue to apply to the Project as amended.

- 12. Negative Effects:** s3.6.6: Has the applicant planned to minimize the negative effects of its activity on the environment?

☒ Yes

☐ No

Include with the application the mitigative measures developed.

The Project Certificate issued for the Mary River Project by the Nunavut Impact Review Board on December 28, 2012 includes extensive requirements for minimizing the negative effects of the Project on the environment. The Project Certificate contains 182 terms and conditions and requires the implementation of management plans for all aspects of the environment including water, vegetation, the aquatic environment, terrestrial wildlife and habitat, birds, the marine environment and marine wildlife and marine habitat.

- 13. Hunting Restrictions:** s3.6.9: The applicant is informed of any special hunting restrictions that may apply to the area and will strictly enforce them at its mine sites and along transportation routes.

☒ Yes

☐ No

Term and Condition No. 62 of the Nunavut Impact Review Board Project Certificate for the Mary River Project specifies that the proponent shall prohibit project employees from transportation of firearms to site and from operating firearms in project areas for the purpose of wildlife harvesting. These requirements are incorporated into the Environmental Management Plans for the Project and will continue to apply to the modifications proposed for the ERP. The IIBA will include provisions for beneficiaries pursuant to the NLCA.

14. Carving Stone Deposits: *Appendix H, s9.* Will the applicant report any discoveries of carving stone deposits to the Qikiqtani Inuit Association?

☒ Yes

☐ No

A soap stone deposit at Mary River is a resource harvested by residents of North Baffin for carving purposes. Like all soapstone deposits, it is protected under the Nunavut Land Claims Agreement (NLCA), giving Inuit inherent harvesting rights. Figure 3-2.3 in Volume 3 of the FEIS indicates the location of the deposit.

MARINE AND TERRESTRIAL TRANSPORTATION

21. Corridor: *s3.5.11, s3.3.5.12:* Does the proposal consider the development of a transportation and/or communications corridor?

☐ Yes

☐ No

If yes, include with the application an assessment of alternate routes, the cumulative effects of the preferred route and options for other identifiable transportation and utility facilities.

The issue of whether the proposal considers the development of a transportation corridor under the above sections has been the subject of correspondence between Baffinland and the NPC, and the issues are summarized in the August 2, 2013 Submission made by Baffinland in response to questions set out by the Commission in its letter of July 30, 2013.

By letter dated August 6, 2013, the NPC requested an application for the development of a transportation corridor pursuant to Section 3.5.11 of the NBRLUP, prior to making a conformity determination. We request that the Commission accept this Revised Application to Determine Conformity as including an application for an amendment to the NBRLUP required under Section 3.5.11 of the NBRLUP and Appendices J and K. The Application includes the Project Description and Addendum to the Final Environmental Impact Statement for the Mary River Project, which Addendum includes, in Appendix 1B-4 a table showing concordance with the EIS Guidelines and Appendices J and K of the NBRLUP. We trust this Application satisfies the August 6, 2013 request of the NPC.

22. Code of Good Conduct for Land Users: *Appendix H:* The applicant undertakes to adhere to the code of Good Conduct at all times.

☒ Yes

☐ No

I, Erik Madsen (Baffinland) (name of applicant), certify that the information I have given in this application is true and correct and hereby make the above undertakings which form part of my application for a project proposal within the meaning of the Nunavut Land Claims Agreement.

A handwritten signature in black ink, appearing to read 'Erik Madsen', written over a horizontal line.

Date: 9 August 2013

Signature of Applicant: _____

North Baffin Regional Land Use Plan
Appendix H
Code of Good Conduct for Land Users

1. The landscape of each camp and other land use sites will be restored to its original condition to the greatest degree possible. Water quality will be preserved and no substances that will impair water quality will be dumped in water bodies. When possible and feasible, old sites will be restored to the natural state.
2. All land users shall assist communities and government(s) in identifying and protecting archaeological sites and carving-stone sites, as required by law.
3. Generally, low-level flights by aircraft at less than 300 metres should not occur where they will disturb wildlife or people. If such flights are necessary, they should only take place after consultation with the appropriate communities. All land users are responsible for reporting to the land managers any illegal or questionable low-level flight.
4. All activities on the land will be conducted in such a fashion that the renewable resources of the area in question are conserved.
5. Whenever practicable, and consistent with sound procurement management, land users will follow the practice of local purchase of supplies and services.
6. Land users will establish working relationships with local communities and respect the traditional users of the land.
7. During the caribou calving, post-calving and migrating seasons, land use activities should be restricted to avoid disturbing caribou, in general, and activities will be governed more specifically by caribou protection measures such as those contained in Appendix I.
8. Artifacts must be left where they are found. All land users are responsible for reporting the location of, or any removal or disturbance of artifacts, to Department of Culture and Heritage.
9. The mining industry is encouraged to assist in identifying local carving-stone deposits and report any discoveries to the QIA. Industry is also encouraged to identify and report old waste sites that need to be cleaned up.
10. All land users shall obey the laws of general application applying to land use.



NPC File No: 148420

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**Innovation, Science and Economic
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Megan Lord-Hoyle

Baffinland Iron Mines Corporation

2275 Upper Middle Rd East Suite 300

Oakville ON L6H0C3 Canada

By email: megan.lord-hoyle@baffinland.com ;
rcook@knightpiesold.com ;
lou.kamermans@baffinland.com

Dear Ms. Lear, Ms. McCaie, Mr. Kharatyan, Mr. Gillis, Mr Williamson Bathory, Ms. Pirie-Dominix, Ms. Williston and Ms. D'Amours-Gauthier, Ms. Chisholm, Mr. Johnstone, Mr. Kunuk, Mr. Stubbing, Ms. Robinson, Mr. Chapple, Ms. Vaillancourt, and Ms. Lord-Hoyle:

RE: NPC File No 148420 [Mary River Phase 2 Expansion Project]

- **Associated NPC File Nos:**
148193 [Mary River Project Land, Freshwater, and Marine Based Monitoring Program];
148423 [Mary River 2017 Winter Sealift]; and
148841 [Production Increase, Fuel Tank and Milne Port Accommodations - Project Modification to Project Certificate No. 005 - 08MN053]
- **Location:** *North Baffin Region [Near the community of Pond Inlet]*

The following works and activities have been proposed in the above-noted project proposal:

1. Increase in iron ore production and transportation from 4.2 Million tonnes per year under the Early Revenue Phase of the Mary River Project to 12 Million tonnes per year via the northern transportation corridor.

2. Construction and operation of a 110 km railway within the Mary River Transportation Corridor between the mine site and Milne Port, generally following the existing Tote Road. Once the railway is in place the Tote Road will remain operational, but its use by Baffinland will drop substantially and will be limited to moving personnel and key goods.
3. Expansion and improvement of the Milne Port facilities. A second ore dock to accommodate Cape sized vessels; a second ship loader, railway unloading and maintenance facilities, and additional support infrastructure will be developed in addition to an enclosed crushing facility.
4. Modification of the shipping season. The ore shipping season is proposed to be from July 01 to November 15, but would be adapted annually in consultation with the Pond Inlet Hunters and Trapper Organization (HTO) based on ice conditions and thickness. It is noted that winter sealift is not included in this proposal, because on October 24, 2017, due to concerns expressed by the communities regarding ice breaking, the proponent has removed the winter sealift component from the original application.
5. Expansion of the existing accommodation camp at the Mine site.

A complete description of the project proposal reviewed by the NPC can be accessed online using the link below.

The Nunavut Planning Commission (NPC) has completed its review of the above noted project proposal. *It should be noted that the development of the Mary River Transportation Corridor to include a railway required an amendment to the North Baffin Regional Land Use Plan (NBRLUP), which was publically reviewed by the NPC and approved as Amendment No. 3 to the NBRLUP by the Federal Minister of Crown-Indigenous Relations and Northern Affairs, the Territorial Minister of Environment, and the President of Nunavut Tunngavik Incorporated and came into effect on May 8, 2018.*

The NPC previously reviewed some of the works and activities associated with the current proposal, including mining and trucking iron ore, the development of the Milne Port facilities and the construction of camp facilities (conformity determination was issued on April 30, 2008, August 12, 2011, February 8, 2016, January 26, 2017 and on May 18, 2018). These conformity determinations still apply. In addition, associated activities were previously reviewed by the Nunavut Impact Review Board (NIRB FILE NO.: 08MN053 & 17UN012).

The NPC has determined that the above-noted project proposal is a significant modification to the project because it requires the reconsideration and revision of reconsideration of terms and conditions in the project certificate No. 005, as well as an amendment to the Type A Water License 2AM-MRY 1325 . It conforms to the NBRLUP. The proponent has undertaken to comply with the applicable conformity requirements of Appendix C, H, I and P of the NBRLUP.

The above-noted project proposal requires screening by the NIRB under section 12.4.3 of the Nunavut Agreement as amended because it is for a component or activity that was not part of the original or previously amended proposal and its inclusion is a significant modification of the project. By way of this letter, the NPC is forwarding the project proposal with this determination to the NIRB for screening. Project materials, including the applicable conformity requirements, are available at the following address:

<http://lupit.nunavut.ca/portal/project-dashboard.php?appid=148420&sessionid=>

The regulatory authorities to which this letter is addressed are responsible under the Nunavut Planning and Project Assessment Act (NUPPAA) to implement any of the applicable requirements by incorporating the requirements directly, or otherwise ensuring that they must be met, in the terms and conditions of any authorizations issued.

This conformity determination applies only to the above noted project proposal as submitted. Proponents may not carry out projects and regulatory authorities may not issue licenses, permits and other authorizations in respect of projects if a review by the NPC is required. Regulatory authorities may consult with the NPC to obtain recommendations on their duties to implement the existing land use plans prior to issuing licenses, permits and other authorizations under subsection 69(6) of the NUPPAA.

My office would be pleased to discuss how best to implement the applicable requirements and to review any draft authorizations that regulatory authorities wish to provide for that purpose. If you have any questions, please do not hesitate to contact me at (867) 979-3444.

Sincerely,

A handwritten signature in black ink, reading "Goump Djalogue". The signature is fluid and cursive, with the first name "Goump" and last name "Djalogue" clearly distinguishable.

Goump Djalogue, MCIP | RPP
Senior Planner,
Nunavut Planning Commission



NIRB File No.: 08MN053

NWB File No.: 2AM-MRY1325 - Amendment No. 1/G1

June 11, 2018

Megan Lord-Hoyle
Director, Sustainable Development
Baffinland Iron Mines Corporation
2275 Upper Middle Road East
Oakville, ON L6H 0C3

Sent via email: megan.lord-hoyle@baffinland.com

Re: Nunavut Impact Review Board Process Guidance—Mary River Modification Applications – Phase 2 Development Proposal and Production Increase Proposal

Dear Megan Lord-Hoyle:

This correspondence is intended to provide procedural guidance in respect of next steps in the Nunavut Impact Review Board's (NIRB or Board) consideration of two (2) applications from Baffinland Iron Mines Corporation (Baffinland) that seek to modify aspects of the original Mary River Project Proposal, NIRB Project Certificate No.: 005 (as amended). The NIRB notes that these two recently-referred applications differ markedly in terms of the scale and scope of changes requested, and also in terms of the land use conformity assessment processes that preceded the referral of the modification applications to the NIRB for assessment. However, as these applications are now being considered by the NIRB at the same time the NIRB has chosen to provide guidance for both applications in this correspondence, rather than issue separate application-specific correspondence.

By way of background, the NIRB has provided abbreviated summaries of the applications in the text that follows. However, to understand the full context of each application specifically, parties should consult the NIRB's public registry at www.nirb.ca by using any of the following search criteria:

- Project Name: Mary River Project
- NIRB File No.: 08MN053
- Application No.: 123910

To directly access any documentation cited in this correspondence, choose the “search documents” option on the NIRB’s online public registry and search for the public registry identification numbers included here as footnotes.

BACKGROUND

Original Mary River Project

The original Mary River Project as approved by the NIRB in 2012,¹ and operated by Baffinland, involves the development of an open pit iron ore mine on northern Baffin Island, with associated infrastructure that includes the use of an existing Tote Road between Milne Inlet and a mine site at Mary River, ports at Milne Inlet and Steensby Inlet, and a railway connecting the mine site to the Steensby Port. As originally proposed, iron ore would be transported from the mine site via a railway to be constructed by Baffinland to the port at Steensby Inlet. The original Mary River Project proposed year-round shipping using custom designed ice-breaking ore carriers through Foxe Basin and Hudson Strait to markets in Europe. Following issuance Mary River Project Certificate No. 005 on December 28, 2012, significant elements of the original Mary River Project were *not* constructed following approval, including: the port at Steensby Inlet, the railway from the mine site to Steensby Inlet, and the fleet of purpose-built ice-breaking ore carriers.

Early Revenue Phase

Immediately following approval of the original Mary River Project and issuance of Mary River Project Certificate No. 005, in January 2013, Baffinland applied for a modification to the approved Mary River Project, seeking to amend specific project components and activities to support limited mining activity to commence prior to the construction of the railway and full facilities at the Steensby Port. Specifically, Baffinland proposed to use the Milne Inlet Tote Road to transport a smaller volume of ore to Milne Inlet for shipment during the open water season only, with the railway and Steensby Port development to be delayed until shipments through Milne Inlet had generated revenue to support subsequent development (the Early Revenue Phase Proposal). Following the NIRB’s assessment of the Early Revenue Phase Proposal, including conducting a Public Hearing, on March 17, 2014 the NIRB recommended that the Early Revenue Phase Proposal should be allowed to proceed with amendments to the terms and conditions of Mary River Project Certificate No. 005.² Following acceptance of the Board’s recommendations by the responsible Ministers, Mary River Project Certificate No. 005 was subsequently amended and re-issued on May 28, 2014.

Phase 2 Development

Soon after receiving approval for the Early Revenue Phase Proposal, on October 29, 2014 Baffinland submitted the “Phase 2 Development Proposal” for the Mary River Iron Mine to the Nunavut Planning Commission (NPC) for consideration;³ the NIRB subsequently received the Phase 2 Development Proposal for assessment on July 13, 2015. The Phase 2 Development

¹ Public Registry ID: 286425

² Public Registry ID: 291199

³ Public Registry ID: 291213 & 291214

Proposal included construction of the following activities *in addition to* the activities associated with the original Mary River Project and the Early Revenue Phase Proposal:

- Changing marine transport of ore from year round shipping to shipping six months of the year (July 01 to December 31), with a focus on shipping ore primarily during the open water season;
- Associated changes at the Milne Port site to maximize shipping during the open water season which would include increases to the size of the proposed second ore dock and ship loader to accommodate cape-sized vessels;
- Reducing the amount of proposed fuel storage at the Milne Port site; and
- The installation of an enclosed ore crushing facility at the Milne Port site.

During the NIRB's consideration of the Phase 2 Development Proposal, the scope of the application was modified by Baffinland to include a proposed northern rail component between the existing Mary River Mine site and the existing facilities at the Milne Inlet Port site. This significant modification resulted in the proposal being referred back to the Nunavut Planning Commission (NPC) for further consideration and processing against the requirements of the North Baffin Regional Land Use Plan on December 19, 2016. The Phase 2 Development Proposal was formally referred back to the NIRB for assessment by the NPC recently on May 29, 2018. As briefly summarized by the NPC in its May 29, 2018 referral to the NIRB,⁴ the current scope of the Phase 2 Development Proposal includes the following works and activities:

1. Increase in iron ore production and transportation from 4.2 Million tonnes per year under the Early Revenue Phase of the Mary River Project to 12 Million tonnes per year via the northern transportation corridor.
2. Construction and operation of a 110 km railway within the Mary River Transportation Corridor between the mine site and Milne Port, generally following the existing Tote Road. Once the railway is in place the Tote Road will remain operational, but its use by Baffinland will drop substantially and will be limited to moving personnel and key goods.
3. Expansion and improvement of the Milne Port facilities. A second ore dock to accommodate cape-sized vessels; a second ship loader, railway unloading and maintenance facilities, and additional support infrastructure will be developed in addition to an enclosed crushing facility.
4. Modification of the shipping season. The ore shipping season is proposed to be from July 1 to November 15, but would be adapted annually in consultation with the Pond Inlet Hunters and Trapper Organization (HTO) based on ice conditions and thickness. It is noted that winter sealift is not included in this proposal, because on October 24, 2017, due to concerns expressed by the communities regarding ice breaking, the proponent has removed the winter sealift component from the original application.
5. Expansion of the existing accommodation camp at the Mine site.

⁴ Public Registry ID: 318134

The next steps for this assessment include the required submission of a Final Environmental Impact Statement Addendum (FEIS Addendum) in accordance with EIS Guidelines issued by the NIRB on October 6, 2015,⁵ to be discussed in more detail later in this correspondence.

Further Interim Development

While the consideration of the Phase 2 Development Proposal remained ongoing, on November 8, 2017 Baffinland submitted a “Tote Road, Camp, and Fuel Upgrade” proposal to the NIRB for consideration.⁶ The scope of this proposal included proposed upgrades to the existing Tote Road to address road safety and operational issues, addition of a 15 ML fuel tank to the existing Fuel Storage Facility at Milne Port and the installation of a new 280-person accommodations camp at the Milne Inlet Port. Following a cursory review of the associated documentation, the NIRB determined that Baffinland had not demonstrated that the proposed activities were separate and distinct from the Phase 2 Development Proposal. On November 17, 2017 the NIRB issued correspondence directing Baffinland to modify and resubmit its proposal once it was able to demonstrate that the proposed activities were independent of and not integrally linked to the Phase 2 Development Proposal, and further noted that sufficient supporting information would be required to assess those proposed works not previously considered by the NIRB.

Related Ongoing Monitoring

On December 8, 2017, the NIRB received correspondence from Baffinland which provided notice that it anticipated Baffinland’s 2017 road haulage operations would meet and potentially exceed (by 5-7%) the 4.2Mt/a limit established by Term and Condition 179(b) of the Mary River Project Certificate No. 005.⁷ On December 12, 2017 the NIRB acknowledged receipt of the update provided by Baffinland and noted that additional reporting would be required from the Proponent once finalized haulage numbers for 2017 became available and an analysis of potential ecosystemic and socio-economic effects associated with the exceedance from predicted/permitted levels of road haulage activities could be completed. The Board further encouraged the Proponent to bring forward an application for a formal reconsideration of Term and Condition 179(b) of the Mary River Project Certificate should Baffinland identify any challenges with complying in future. Baffinland later confirmed the actual 2017 ore haulage total was 4.54 Mt, representing an approximately 7.5% exceedance.

Production Increase Proposal

On April 30, 2018 Baffinland submitted to the NPC and the NIRB, the “Production Increase, Fuel Storage and Milne Port Accommodations Modification Proposal” (Production Increase Proposal).⁸ The proposed modifications involve an increase from the current limit of 4.2 Mt/a that can be trucked from the mine site on the Milne Inlet Tote Road and shipped from Milne Inlet Port to 6 Mt/a and include addition of a 15 ML diesel fuel tank to the existing Fuel Storage Facility at Milne Port (consistent with the 2017 “Tote Road, Camp, and Fuel Upgrade” proposal) and the installation of a new 380-person accommodations camp at the Milne Inlet Port (further increased from the 2017 “Tote Road, Camp, and Fuel Upgrade” proposal). Baffinland is now

⁵ Public Registry ID: 317361

⁶ Public Registry ID: 314260

⁷ Public Registry ID: 314492

⁸ Public Registry ID: 318142 , 318143, 318141 , 318140

requesting that the NIRB reconsider Conditions 179(a)⁹ and 179(b)¹⁰ of Mary River Project Certificate No. 005 and amend these items to accommodate the proposed project changes, independent of the Board's consideration of the activities associated with the Phase 2 Development Proposal.

THE NIRB'S PROCESS FOR ASSESSING
THE PHASE 2 DEVELOPMENT PROPOSAL

In general, where an approved project is already governed by the terms and conditions of a NIRB Project Certificate, to determine the process and procedure guiding NIRB's assessment of any modification proposal the Board must consider the following questions:

- Is the proposed modification included within the scope of the original project as previously assessed by the NIRB?
- Is the proposed modification consistent with the terms and conditions of the existing NIRB Project Certificate, or are changes to the Project Certificate necessary to reflect the modification?
- Does the proposed modification constitute a significant modification to the original project that is integrally-linked to the original project (or project as subsequently modified by any modification proposals that have been assessed and approved by the NIRB, such as the amendment to Project Certificate No. 005 to reflect the Early Revenue Phase Proposal)?
- Does the proposed modification constitute a significant modification to the original project that is not integrally-linked to the original project, and that has sufficient scope to be assessed as an independent project proposal?

In respect of Baffinland's Phase 2 Development Proposal, the NIRB has concluded the following:

- Baffinland's Phase 2 Development Proposal constitutes both a significant modification to the original project and a significant modification to the original scope of the Phase 2 Development Proposal received in 2014;¹¹
- Baffinland's Phase 2 Development Proposal is integrally-linked to the Original Mary River Project (as amended to reflect the Early Revenue Phase Proposal); and
- If the Board determines that the proposed modifications are acceptable, amendments to the existing terms and conditions of the Mary River NIRB Project Certificate No. 005 may be necessary to reflect the potential for ecosystemic and socio-economic impacts resulting from the proposed modifications.

⁹ For each year after the Proponent commences shipping ore via Milne Inlet under the Early Revenue Phase Proposal, the Proponent shall include in the Annual Report to the NIRB, a summary of the total amount of ore shipped via Milne Inlet for the previous calendar year.

¹⁰ In any given calendar year, the total volume of ore transported by truck on the Milne Inlet Tote Road shall not exceed 4.2 million tonnes.

¹¹ Public Registry ID: 306281

In terms of the process governing the Board's assessment of the Phase 2 Development Proposal, the Board concluded in 2014, and reaffirmed in 2016, that, given the integral link between the original Mary River Project and the changes proposed in the Phase 2 Development Proposal, it was appropriate for the NIRB to conduct the assessment of potential impacts as a reconsideration of the existing terms and conditions of Project Certificate No. 005 under Article 12, Section 12.8.2 of the *Nunavut Agreement*. In addition, as previously indicated by the NIRB,¹² due to the addition of the northern rail line to the original Phase 2 Development Proposal in 2016, the NIRB's reconsideration of the revised Phase 2 Development Proposal will be conducted under both the *Nunavut Agreement* and relevant reconsideration provisions of the *NuPPAA* (s. 112) as required under the transition provisions of the *NuPPAA* (s. 235).

The NIRB recognizes that on March 10, 2016, the Qikiqtani Inuit Association (QIA) filed correspondence with the Board requesting clarification about the NIRB's processing of Baffinland's Phase 2 Development Proposal as a reconsideration of the existing Project Certificate under Article 12, Section 12.8.2 of the *Nunavut Agreement* rather than as a separate project proposal under Article 12, Section 12.8.3 of the *Nunavut Agreement*. Specifically, the QIA posed the following question:

*QIA requests clarification from [sic the NIRB] as to whether, in the Board's opinion, the modified Project Proposal should undergo an assessment as prescribed by NUPPAA and the NLCA, or if the Board will again, at the request of the Proponent, forgo screening and review to instead reconsider the terms and conditions of the Project Certificate? To be clear, QIA would advocate for the former.*¹³

As noted recently by the NIRB during the Board's consideration of a significant modification to the existing Meliadine Gold Mine Project (NIRB File No. 11MN034), the NIRB rejects the notion that the only mechanism for the NIRB to assess the potential ecosystemic and socio-economic effects of a modification proposal is to conduct a separate screening and review of the modification proposal. The Board's views were stated as follows:

Although not expressly stated, the Federal Response appears to suggest that the only mechanism for the NIRB to assess the potential ecosystemic and socio-economic impacts of a modification proposal is to undertake a separate screening of the modification proposal. The NIRB does not agree with that premise.

In the Board's view, conducting the assessment of a proposed modification as a separate screening may be appropriate in circumstances where the modification proposal is sufficiently separate and distinct from the original previously-assessed project and may be considered as a separate but related project. Examples of this approach include the NIRB's assessment of the

¹² Public Registry ID: 306281

¹³ Public Registry ID: 301457

mining of a new deposit proposed in Agnico Eagle's Whale Tail Pit Project (NIRB File No.:16MN056) and also the proposed mining of a new deposit proposed in TMAC's Phase 2 Hope Bay Belt Project (NIRB File No.: 12MN001).

In contrast, where a modification proposal is considered to be within the scope of the assessment of the original project, is integrally-linked to the original project and is not sufficient in scope to be assessed as a stand alone project, the NIRB has clearly rejected the notion that the only mechanism for assessing such modification proposals is for the Board to conduct a separate screening. As illustrated in several reconsiderations of Project Certificate terms and conditions conducted by the NIRB to date under Article 12, Section 12.8.2 of the Nunavut Agreement, the Board's reconsideration must necessarily include an assessment of the potential for the proposed modification to result in changes to the ecosystemic and socioeconomic effects previously assessed for the original project, and the assessment required by the NIRB during a reconsideration is no less rigorous than a screening (and in some cases, even a full environmental review). [footnotes in the original omitted]¹⁴

Consistent with this approach, and recognizing that the Board has concluded that Baffinland's Phase 2 Development Proposal currently under assessment is integrally-linked to the previously-approved Mary River Project (as modified under the Early Revenue Phase), in the NIRB's view it is appropriate to conduct the assessment of the Phase 2 Development Proposal as a reconsideration of the terms and conditions of Project Certificate No. 005.

Now that the Phase 2 Development Proposal has again been referred to the NIRB for assessment, the next step in the Board's reconsideration process is submission of a Final Environmental Impact Statement Addendum (FEIS Addendum) by Baffinland to support the public review process. The Board previously issued the enclosed *Guidelines to the Preparation of an Environmental Impact Statement for Baffinland's Iron Mines Corporation's Mary River Project (NIRB File No.: 08MN053), Amended Version for the Phase 2 Development Proposal* (the *Amended Guidelines*) to Baffinland to guide its preparation of the required FEIS Addendum; the NIRB has reviewed the *Amended Guidelines* to determine whether, with the addition of the northern rail line to the scope of the Phase 2 Development Proposal, revisions are required. The NIRB has concluded that to reflect the addition of the northern rail line, the *Amended Guidelines* should be updated to add the specific rail line assessment (as found in the EIS Guidelines governing the Board's assessment of the Original Mary River Project Proposal). Other than this addition to the *Amended Guidelines*, no further revisions are required, and Baffinland is advised to prepare the FEIS Addendum assessing the potential ecosystemic and socio-economic effects of the Phase 2 Development Proposal in accordance with the EIS Guidelines.

Following the receipt of Baffinland's FEIS Addendum, the NIRB will conduct an internal conformity review of the submission to determine whether it adequately addresses the

¹⁴ Public Registry ID: 316766

requirements of the *Amended Guidelines*. The Board trusts that the Proponent will find sufficient direction in the *Amended Guidelines* to complete the FEIS Addendum as required to support a thorough public technical review; the Board respectfully requests that Baffinland provide an anticipated date of submission for its FEIS Addendum following its review of the enclosed *Amended Guidelines*.

Once the NIRB determine the FEIS Addendum conforms with the EIS Guidelines, the Board will accept the submission and may initiate the NIRB's standard 90 day public review of the FEIS Addendum consisting of an initial 30 day information request period followed by a 60 day technical review period, as well as the facilitation of public information sessions in the potentially affected communities. It should be noted that, recognizing the capacity limits and potential for confusion of reviewers, the NIRB and the public if the NIRB's consideration of the Production Increase Proposal is overlapping with the Board's reconsideration of the Phase 2 Project Proposal, the Board may delay initiating the public review process for the FEIS Addendum until the NIRB has closed the record on the Board's consideration of the Production Increase Proposal.

In any event, during the NIRB's public information sessions and public review process for the Phase 2 Project Proposal, the NIRB will also solicit public input into the need/utility of scheduling of a meeting of technical experts (i.e., Technical Meeting) to address technical issues arising from the proposed modification and/or the information contained in the FEIS Addendum, as well as inviting discussion about the most appropriate format for a public hearing (written, teleconference or in person) in support of the Phase 2 Project Proposal reconsideration process.

THE NIRB'S PROCESS FOR ASSESSING THE PRODUCTION INCREASE PROPOSAL

To select the most appropriate process to assess the potential ecosystemic and socio-economic effects of Baffinland's "Production Increase, Fuel Storage and Milne Port Accommodations Modification Proposal" (Production Increase Proposal), the Board has considered the following questions:

1. Is the Production Increase Proposal included within the scope of the previously assessed Mary River Project (including as modified by the Early Revenue Phase Project Proposal)?
2. Is the proposed modification consistent with the terms and conditions of the existing NIRB Project Certificate, or are changes to the Project Certificate necessary to reflect the modification?
3. Is the Production Increase Proposal integrally-linked to the Mary River Project, and/or should the modification proposal be characterized as within the scope of the Phase 2 Development Proposal currently being assessed by the Board?
4. If the Production Increase Proposal is integrally linked to the Mary River Project, do the proposed modifications warrant reconsideration of the terms and conditions in Project Certificate No. 005?

Having now reviewed the Production Increase Proposal and the recent June 5, 2018 correspondence from Baffinland, the Board has determined that the proposed activities were *not* included within the scope of the previously assessed Original Mary River Project (including as modified by the Early Revenue Phase Project Proposal). The activities comprising the Production Increase Proposal *are* integrally-linked to the approved Original Mary River Project but *are not* within the scope of the Phase 2 Development Proposal.

In considering the significance of modifications associated with the three main components of the Production Increase Proposal, it is the NIRB's understanding that the proposed fuel tank farm upgrade and the proposed Milne Inlet camp upgrade would require only modifications, not amendments under the existing Type "A" Water Licence (2AM-MRY1325). The Board further recognizes that the proposed increase from the current limit of 4.2 Mt/a to 6 Mt/a of ore that can be trucked from the mine site on the Milne Inlet Tote Road and shipped from Milne Inlet Port is explicitly incompatible with Conditions 179(a) and 179(b) of Mary River Project Certificate No. 005 which would require amendments, if the Board were to approve the modifications proposed in the Production Increase Proposal. On these bases, the Board has decided the modifications proposed in the Production Increase Proposal require assessment through a formal reconsideration of these specific Project Certificate terms and conditions.

Further, the Board's previous assessment of the Early Revenue Phase Proposal and results from the NIRB's ongoing monitoring program for the Original Mary River Project clearly indicate that public concern already exists associated with dust generation from the ore haulage on the Milne Inlet Tote Road and with shipping-related impacts to marine wildlife and Inuit harvesting in the Milne Inlet area. Consequently, it is reasonable for the NIRB to expect that significant public concern is likely to be associated with the proposed increase to ore transport under the Production Increase Proposal and that these concerns will need to be addressed during the NIRB's assessment of this modification proposal.

As indicated in Baffinland's June 6, 2018 correspondence to the NIRB,¹⁵ the Board has considerable discretion in the form of public engagement undertaken as part of a reconsideration of Project Certificate terms and conditions. The public engagement undertaken by a project proponent or other parties is, however, not a direct substitute for the requirement for the Board to create opportunities for the public to meaningfully participate directly within the NIRB's tailored reconsideration assessment processes.

In terms of the specific public engagement associated with the reconsideration process for this file, the NIRB acknowledges the following:

- The NIRB agrees that the need for flexibility, efficiency and coordination must be considered by the Board when establishing applicable processes;
- The Board will investigate the feasibility of having a staff person attend the QIA-led engagement sessions planned for July in Pond Inlet as set out in Baffinland's June 6, 2018 correspondence. Further, the NIRB may undertake its own directed engagement

¹⁵ Public Registry ID: 318065

with the community in coordination with these sessions, depending upon factors such as the availability of time and resources, and the support of the community;

- The Board will consider the engagement undertaken by Baffinland and QIA (and NIRB staff) as planned in July to provide subsequent additional direction to Baffinland, intervenors and communities regarding whether an in-person Public Hearing will be required by the Board to consider the Production Increase Proposal.
- There are a number of specific points where additional information is required to be submitted so that the application for the Production Increase Proposal can be accepted as a completed FEIS Addendum to support the next steps in the reconsideration process – **Appendix A** of this correspondence sets out these information requirements in detail
- As noted above, recognizing the limited capacity of reviewers, the community, etc. the Board will not commence the public technical review of the FEIS Addendum for the Phase 2 Development Proposal until the record is closed for the NIRB's assessment of the Production Increase Proposal.

CONCLUSION

As noted above, the NIRB respectfully requests that Baffinland provide its anticipated date of submission for the FEIS Addendum required to support the assessment of the Phase 2 Development Proposal as soon as practicable.

With respect to next steps associated with the NIRB's processing of the Production Increase Proposal, the NIRB will await Baffinland's submission of the additional information set out in **Appendix A** required for the application to be considered by the Board as a FEIS Addendum required to support the assessment. Upon receipt of the required information, the NIRB will initiate a public technical review of the proposal and will provide additional details regarding the associated assessment process and timelines at that time.

Should you have any questions or require clarification in relation to the NIRB's approach to processing these modification proposals, please contact the undersigned directly at (867) 983-4608 or rbarry@nirb.ca. If you have any questions related to the NIRB's monitoring program for the Mary River Project, please contact the NIRB's Monitoring Officer for the Mary River Project, Solomon Amuno at (867) 983-4603 or samuno@nirb.ca.

Sincerely,



Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: William Napier, Baffinland Iron Mine Corporation
Lou Kamermans, Baffinland Iron Mine Corporation
Karén Kharatyan, Nunavut Water Board
Mary River Distribution List

Attached: Appendix A – Information Required to Support Assessment of the Production Increase Proposal

Enclosed (1): Updated Guidelines to Baffinland for the Preparation of a Final Environmental Impact Statement
Addendum for the Phase 2 Project Proposal (October 6, 2015)

APPENDIX A: INFORMATION REQUIRED TO SUPPORT ASSESSMENT OF THE PRODUCTION INCREASE PROPOSAL

The Nunavut Impact Review Board (NIRB) has identified the following listing of information as required to supplement Baffinland Iron Mines Corporation's (Baffinland) "Production Increase, Fuel Storage and Milne Port Accommodations Modification Proposal" (Production Increase Proposal) for the application to be considered by the Board as a Final Environmental Impact Statement Addendum (FEIS Addendum) capable of supporting a public technical review. In all cases the NIRB expects updated impact predictions to be provided for the proposed project components and activities to reflect the contributions of the additional activities described in the Production Increase Proposal to the effects of the approved Project with discussion of whether predictions and associated monitoring, mitigation and residual effects for air quality and local climate conditions remain consistent with the analysis provided in the FEIS and FEIS Addendum previously supplied for the Mary River Project Proposal and the associated Early Revenue Phase (ERP) Proposal. The Proponent is further encouraged to demonstrate how its monitoring results and experiences gained in operating the approved Project to date have informed its development of the Production Increase Proposal. While the FEIS Addendum may include specific references to information already posted to the NIRB's public registry, specific public registry identification numbers must be provided, with clear reference to the applicable pages within the document to be referenced. Where substantive revisions or updates to existing management plans have been prepared to specifically support activities outline in the Proposal, they should be provided for review with the FEIS Addendum.

The FEIS Addendum must address the following specific points:

1. How public consultation and Inuit Qaujimaningit/Qaujimajatuqangit, local knowledge and community knowledge have influenced the planning and design of the proposed activities and associated management plan updates.
2. Clarification regarding rationale for excluding upgrades to the Milne Inlet Tote Road from the scope of the Production Increase Proposal, identified in previous submissions as necessary to address road safety and operational issues.
3. Identification of the extent to which Baffinland's Environmental Management Plans, including the Air Quality Management Plan, Oil Pollution Emergency Plan (OPEP), Fuel and Spill Contingency Plan, and Decommissioning and Reclamation Plan would require updates or revisions to address prevention/mitigation of additional dust/GHG emission loading into the environment.
4. Description of how additional sewage and solid wastes materials generated from the proposed new camp facility at Milne Inlet would be managed, with information regarding the location of the sewage management facility, the number and type of trucks to be used for sewage haulage, frequency of sewage collection from the proposed facility, and use of the landfill.
5. Discussion of the anticipated timelines to provide respective regulatory authorities with engineering design and drawings, specifications and engineering analysis to support the design of the proposed camp facility at Milne Inlet and associated infrastructure.

6. Discussion of the environmental implications of sourcing granular resource materials from quarry (Q1) for the new camp facility:
 - Information on the quantity and quality estimates of granular resources from Q1 with discussion of how acid drainage and metal leaching potential of the granular materials have been taken into consideration to avoid any potential ecological risk; and
 - Discussion of how activities within quarry Q1 would be managed to avoid or minimize the creation of pits and depressions to the degree practicable to reduce the potential for standing water.
7. Operational plans and mitigation strategies intended to address potential interactions of proposed activities with traditional hunting activities and potential impacts from increased truck haulage and shipping activities, including:
 - Discussion of the potential impacts to, and interactions with, Inuit harvesting in the port area and along the shipping route;
 - Assessment of potential contaminant loading in sea water and ice from dust plumes deposition at the port site;
 - Discussion of the potential interactions, accidental injuries and mortality of marine mammals directly or indirectly from additional shipping (open water and ice breaking shipping) activities, in particular those marine mammals, which congregate around the proposed northern shipping route;
 - Potential social-economic impacts from increased shipping levels, taking into account any impacts on marine species on which local residents rely on as food sources; and
 - Discussion of proposed safety measures, including considerations for hiring personnel with local knowledge of the marine areas to act as ship-board monitors along the shipping route (Milne Inlet-Eclipse/Baffin Bay) and details regarding the proposed procedures for accident, malfunction and incident management and reporting associated with increased shipping activities.
8. Discussion of proposed management plans for accommodating additional volumes of materials at waste rock facilities, with a discussion of contingency measures that would be employed should the designed facility not be adequate to accommodate the amounts of waste rock generated.
9. Discussion of how the proponent intends to comply with the oil handling facilities standards (TP 12402E), with clarification regarding whether the proposed additional fuel capacity would be expected to increase the minimum size of an oil pollution incident or spill size, beyond what was previously assessed for the approved Project.
10. Discussion of the environmental implications of increased fuel consumption for the Project, should the proposed activities be approved to proceed.
11. Information regarding the adequacy of the current emergency response procedures to address all potential accidents, spills, and or malfunctions associated with the proposed increase in capacity at the fuel storage facility at Milne Inlet. Clarification

should also be provided regarding what protection measures and best management practices would be employed for the construction and containment of additional fuel tanks and storage area to prevent any damage to the surrounding environment.