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VIA EMAIL (via email: lpayette@nirb.ca)

Nunavut Impact Review Board
Manager of Environmental Administration
P.O. Box 1360
Cambridge Bay, NU, X0B 0C0

Attention: Ms. Leslie Payette

Dear Ms. Payette:

**Subject: Baffinland Iron Mines Corporation (“Baffinland”)
Mary River Project (the “Project”)
Nunavut Impact Review Board (“NIRB”)
NIRB File No. 08MN053
Our File No. 530598-1**

We are regulatory counsel for Baffinland.

We have reviewed the submissions filed by various parties in response to the NIRB letter dated May 2, 2008. On behalf of Baffinland, we are replying to the submissions filed by the Qikiqtani Inuit Association (“QIA”) as contained in Mr. Amagoalik’s letter dated June 2, 2008. In his letter, Mr. Amagoalik addresses the following two issues:

1. Coordination between NIRB and the Nunavut Planning Commission (“NPC”); and
2. Coordination between NIRB and the Nunavut Water Board (“NWB”).

In this letter, we address the first issue, namely the coordination between NIRB and the NPC. It is our view that the precise level of coordination that is appropriate between NIRB and the NWB can be the subject of further dialogue between the parties after the Minister of Indian and Northern Affairs Canada has made a decision on whether review of the Project will be under Part 5 or Part 6 of the *Nunavut Land Claims Agreement* (“NLCA”).

By way of letter dated April 30, 2008, the NPC advised that it had concluded its conformity review of the Project and had determined as follows:

The NPC has completed its review of the above noted project proposal. The project conforms with the North Baffin Regional Land Use Plan (NBRLUP) and we are forwarding it to NIRB for screening. We draw your attention to the provisions of sections 3.5.11 and 3.5.12 of Appendix "C" of the NBRLUP, a copy of which is enclosed, and note that a joint process to address the prospective transportation corridor is contemplated by those provisions. NPC looks forward to working with NIRB in accordance with those provisions.

The QIA states it is difficult "to reconcile the NPC's conformity decision with an outstanding requirement for an amendment to the NBLUP" and that should the "NIRB and the NWB proceed without a conformity decision, based on an amendment to the NBLUP, there is an unnecessary risk that the process could be challenged." In reply, we submit the NPC has made a valid conformity decision and this decision, from both a legal and practical perspective, can be reconciled with the requirement for an amendment under the NLCA. Therefore, NIRB and the NWB can legally proceed with their respective reviews of the Project.

Section 11 of the NLCA is with respect to land use planning and section 11.2 sets out the planning principles, policies, priorities and objectives of the land use planning regime in Nunavut. The pertinent provisions of section 11.2 are (emphasis added):

11.2.1 The following principles shall guide the development of planning policies, priorities and objectives:

- (d) the public planning process shall provide an opportunity for the active and informed participation and support of Inuit and other residents affected by the land use plans; such participation shall be promoted through various means, including ready access to all relevant materials, appropriate and realistic schedules, recruitment and training of local residents to participate in comprehensive land use planning;
- (f) the planning process shall be systematic and integrated with all other planning processes and operations, including the impact review process contained in the [NLCA];

The provisions of the NLCA must be read so as to be consistent with the above stated principles. In this regard, review of the entire Project, including the proposed corridor, by both NIRB and the NPC jointly is consistent with these principles because of the following:

1. Environmental assessment of the entire Project, including the proposed corridor amendment, by both NIRB and the NPC, will ensure that there is an opportunity for the active and informed participation and support of the Inuit.

2. Environmental assessment of the proposed corridor by way of a joint process which includes information relating to the rest of the Project will ensure that participants have access to all of the information that will be required to determine whether the environmental and socio-economic impacts, including cumulative impacts, resulting from the proposed corridor are acceptable.
3. The most appropriate route for the proposed corridor cannot be determined in isolation as the route and its potential alternatives will largely be dependant on the findings made in connection with the Project's marine terminals and mine facilities.
4. Environmental assessment of the proposed corridor and the Project jointly by NIRB and the NPC constitutes a "systematic and integrated" process.

Accordingly, proceeding by way of a joint NIRB and NPC review of the Project, including the proposed corridor amendment, is consistent with the principles set out in section 11.2 of the NLCA. A joint NIRB and NPC review of the Project, including the proposed corridor amendment, is also consistent with the other pertinent provisions in the NLCA, including sections 11.5.10, 11.6.2, 12.3.1 and 12.3.2, which state as follows:

11.5.10 The NPC shall review all applications for project proposals. Upon receipt and review of a project proposal, the NPC or members thereof or officers reporting to the NPC shall:

- (a) determine whether the project proposals are in conformity with plans; and
- (b) forward the project proposals with its determination and any recommendations to the appropriate federal and territorial agencies.

The land use plan may make provision for the NPC to approve minor variances.

11.6.2 The NPC shall consider a proposed amendment and, if it deems a review appropriate, review the proposal publicly.

12.3.1 Where the NPC determines, pursuant to Section 11.5.10, that a project proposal is in conformity with the land use plans, or a variance has been approved, the NPC shall, subject to Sections 12.3.2, 12.3.3 and 12.4.3, forward the project proposal with its determination and recommendations to NIRB for screening.

12.3.4 NIRB shall not screen project proposals that are not in conformity with land use plans, unless an exemption has been received under 11.5.11 or a variance has been approved under Section 11.5.10.

In this case, the NPC has exercised the discretion granted to it under section 11.5.10 of the NLCA and determined that the Project proposal is in conformity. In doing so, it had to exercise

its discretion under section 11.6.2 and determine that the proposed corridor amendment should be the subject of a public review. Accordingly, the NPC, consistent with section 12.3.1 of the NLCA, has forwarded the Project, including the proposed corridor amendment, to NIRB for review. These provisions must be read so as to be consistent with the principles contained in section 11.2.1 of the NLCA and in particular section 11.2.1(f). The NPC has legally exercised its discretion in accordance with the NLCA.

The NPC could have exercised its discretion differently. It could have determined, pursuant to section 11.6.2, that a review of the proposed corridor would not be appropriate in which case it would not have issued a positive conformity decision for the Project. This would mean that NIRB, as a result of section 12.3.4 of the NLCA, could not review the Project unless Baffinland first obtained from the Minister an exemption pursuant to section 11.5.11.

The QIA, in its letter, refers to Appendix “C” of the NBRLUP and the information requirements contained therein. This information was not necessary for the purposes of the NPC exercising its discretion pursuant to section 11.6.2 of the NLCA. This information will be necessary, however, for the purposes of the public review that will be undertaken jointly by NIRB and the NPC. The NPC, in its conformity decision, specifically directed that the public review of the proposed corridor is to take place in accordance with Appendix “C” of the NBRLUP. Baffinland will provide this information as the review process proceeds.

The NPC has not delegated or abdicated any of its decision making power or duties under the NLCA by issuing its conformity decision of April 30, 2008. At the end of the review process undertaken jointly by NIRB and the NPC, it will still be up to the NPC to recommend, taking into account the comments of the public and the results of the environmental and socio-economic impact assessments, whether the proposed amendment should be accepted or rejected by the Ministers.¹

In conclusion, we submit that the review of the Project and the proposed amendment should proceed by way of a joint NIRB and NPC review for the following reasons:

1. The NPC’s conformity decision of April 30, 2008, is consistent with the principles and the specific provisions contained in the NLCA and the NBRLUP. The NPC exercised its discretion in accordance with the provisions of the NLCA and the NBRLUP and committed no error in law. The joint NIRB and NPC review process is specifically contemplated in the NLCA and the NBRLUP.
2. As part of the joint NIRB and NPC review process, the environmental and socio-economic impact assessment of the proposed corridor amendment will be carried out and will take into account information relating to the entire Project, including that portion of the corridor located outside of the NBRLUP area, thereby ensuring a full and complete assessment.

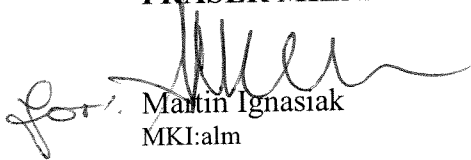
¹ The reference to “Ministers” is to the Minister of INAC and the Nunavut Minister responsible for renewable resources; see s. 11.6.3 of the NLCA.

3. As part of the joint NIRB and NPC review process, the environmental and socio-economic impact assessment of the proposed corridor amendment will consider the information set out in Appendix "C" of the NBRLUP.
4. The joint NIRB and NPC review process will allow for the active and informed participation and support of Inuit and other residents affected by the proposed corridor. No one will be prejudiced if the review of the proposed amendment is done by way of a joint NIRB and NPC review carried out in conjunction with the review of the entire project.
5. The NPC has not delegated or abdicated any of its decision making power or duties under the NLCA. It will still be up to the NPC to recommend, taking into account the comments of the public and the results of the environmental and socio-economic impact assessments, whether the proposed amendment should be accepted or rejected by the Ministers.

Therefore, we ask that NIRB proceed as soon as possible in making its recommendation to the Minister of Indian and Northern Affairs Canada that the Project be subject to a Part 5 Review under the NLCA.

Yours truly,

FRASER MILNER CASGRAIN LLP


for Martin Ignasiak
MKI:alm

- cc: Qikiqtani Inuit Association
Attn: Mr. Amagoalik (*via email*)
- cc: Baffinland Iron Mines Corporation
Attn: Mr. Chubb (*via email*)
- cc: Nunavut Water Board
Attn: Ms. Beaulieu (*via email*)
- cc: Nunavut Planning Commission
Attn: Mr. Aglukark (*via email*)