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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**

Further to our letter of June 3, 2008, wherein we replied to the submissions filed by the Qikiqtani Inuit Association, we have now had an opportunity to review the remaining submissions filed by the various parties in response to the NIRB letter dated May 2, 2008.

We note that the Department of Fisheries and Oceans ("DFO") "looks forward to working with NIRB, NWB and the NPC on the assessment of the Mary River Project." The Government of Nunavut "supports an efficient regulatory process and believes that a joint review of the corridor would be a way to ensure a thorough and holistic public review of the corridor occurs in an expeditious manner." Transport Canada is of the opinion that the NPC and NIRB "should jointly arrive at a process to gather the necessary information that would be required to review the proposed transportation corridor. . ." Baffinland agrees with these submissions.

In its letter of June 4, 2008, Indian and Northern Affairs ("INAC") states that "in [INAC's] view, conformity with a land use plan means that the project must be capable of being constructed and operated as proposed under the land use plan currently in place." With respect, we submit that under the *Nunavut Land Claims Agreement* ("NLCA"), the decision as to whether a project

proposal is in conformity with the North Baffin Regional Land Use Plan (“NBRLUP”) rests with the NPC. It is the NPC that is responsible for the development and administration of land use plans. The NPC has exercised its jurisdiction and applied the conformity criteria which the NBRLUP states “will be interpreted by the NPC in accordance with the principles that have guided the development of this plan.”¹

The NBRLUP states as follows:²

A project proposal will be determined to conform to this plan if it meets the conformity criteria set out below. Principally, these are the specific requirements concerning conservation, communications, renewable resource use, conservation areas, transportation, mineral and oil and gas development, research, heritage resources and waste cleanup that flow from the NPC’s analysis in Chapter 3.

Chapter 3 of the NBRLUP is over 40 pages in length and sets out numerous interrelating terms, principles and conformity requirements. One of these conformity requirements is that a proponent “wishing to develop a transportation and/or communications corridor shall submit to the NPC a detailed application for amendment.”³ Conformity requirements are defined as requirements that “will be applied by the NPC in determining the conformity of project proposal with the plan under s. 11.5.10 of the NLCA.”⁴ Nowhere does the NBRLUP state that an amendment must be approved prior to a positive conformity decision. Instead, it expressly contemplates that the submission of an amendment application will be considered by the NPC when making a conformity decision pursuant to the NLCA.

INAC’s view that a positive conformity decision is inconsistent with the requirement for an amendment is based on an assumption that the NBRLUP is similar in nature to municipal land use by-laws used in most municipalities across Canada. However, the NBRLUP states as follows:⁵

It is also important to recognize that land use planning in this part of Canada - particularly in the context of the NLCA land and resource management system - does not necessarily resemble the administrative process by which municipal officials determine the conformity of land use applications with local zoning by-laws in southern Canada. [. . .] Also, the NPC is not a permitting agency; land use planning under the NLCA is a policy-making function whose regulatory effect is intended to be broad.

The Minister of INAC endorsed this concept of land use planning when the Minister approved the NBRLUP. In addition, the Minister endorsed the concept of a joint NPC/NIRB review of a proposed corridor amendment as described at page 46 of the NBRLUP. Accordingly, there is no

¹ NBRLUP at Chapter 6, page 80.

² NBRLUP at Chapter 6, page 80

³ NBRLUP at Chapter 3, page 46. Baffinland has done so and has advised the NPC that it will provide detailed assessment information regarding the proposed corridor through the review process.

⁴ NBRLUP at Chapter 3, footnote 7 on page 29.

⁵ NBRLUP at page 1.

requirement for an agreement under Article 12.2.4 of the NLCA since the Minister of INAC has already approved the NBRLUP and the processes defined in it.

In conclusion, for the reasons contained herein and in our letter of June 3, 2008, we submit that the review of the Project and the proposed amendment should proceed by way of a joint NIRB and NPC review. We ask that NIRB proceed as soon as possible in making its recommendation to the Minister of INAC that the Project be subject to a Part 5 Review under the NLCA.

Yours truly,


FRASER MILNER CASGRAIN LLP

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MKI:alm

cc: Indian and Northern Affairs
Attn: Mr. McLean

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*)