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QIA File No.: LUA-2008-008

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December 9, 2011

Erik Madsen

Vice-President, Sustainable Development, Health, Safety & Environment

# Baffinland Iron Mines Corporation

Suite 1016, 120 Adelaide Street West

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*Sent via Email:* [erik.madsen@baffinland.com](mailto:erik.madsen@baffinland.com)

**Re: NIRB's Preliminary Hearing Conference Decision for Baffinland's Mary River Project**

Dear Mr. Madsen:

On November 6-7, 2011 and November 9-10, 2011, the Nunavut Impact Review Board (NIRB or Board) held a Preliminary Hearing Conference (PHC) in the communities of Igloolik and Pond Inlet, respectively. The Board heard discussion by Parties and Baffinland Iron Mines Corporation (Baffinland or Proponent) on seven issues to be considered within the next steps of the NIRB's Review of the Mary River Project, including information to be included within the Proponent's submission of a Final Environmental Impact Statement (FEIS) and further preparations for a Final Hearing.

Seven issues were addressed during the PHC:

1. Anticipated date for submission of the Final Environmental Impact Statement
2. Date, time and location of the Final Hearing
3. Timetable for the exchange of documents and information requests prior to the hearing
4. Formulation of issues for the hearing
5. Procedures to be followed in the hearing
6. Equipment, language, interpretation, translation and transcript requirements
7. Other matters that may aid in the simplification of the hearing

The Board has enclosed its *Preliminary Hearing Conference Decision Concerning the Mary River Project* (the “PHC Decision”), which represents the Board’s position on the seven issues as listed above and further includes direction to the Proponent for information it is required to include within its FEIS. The following are highlights from the enclosed PHC Decision:

### **The Final Hearing**

The dates for the Final Hearing will be set once the FEIS is received from Baffinland, the Board’s conformity review is complete and the technical review is underway. The venues for the Final Hearing will be the City of Iqaluit and Hamlets of Igloolik and Pond Inlet. The Board is committed to taking steps to ensure participation of a broad range of representatives from potentially affected communities. In order to facilitate the scheduling of expert witnesses, primary technical presentations will take place in Iqaluit and the Final Hearing agenda will be organized by specific technical topics.

Once filed, the FEIS will be subject to a minimum 90 day technical review period. The NIRB will establish a process for the submission of information requests and may schedule another meeting of technical experts (i.e. a technical meeting) and/or pre-hearing conference. Following the technical review of the FEIS, the Board will formulate the issues for the Final Hearing.

The Final Hearing will proceed in accordance with the NIRB Rules of Procedure, dated September 3, 2009. The Board decided to vary Rule 18.2 and 20.1(b) respectively to require notice of a meeting of technical experts (technical meeting) and notice of a PHC to be given to the Proponent and project distribution list at least 30 days before the technical meeting or PHC. The Board also decided to vary Rule 38.1 to direct a party wishing to rely on documentary evidence at the Final Hearing to file the documentary evidence at least 30 days before the date of the hearing.

### **Commitments from Baffinland, Additional Issues and Specific Direction**

The Board believes Baffinland will resolve most of the parties’ outstanding concerns by complying with the specific direction and implied intention of the NIRB’s EIS Guidelines and by fully meeting its commitments as set out in Appendix 1 of the PHC Decision. In addition to the commitments set out in Appendix 1, the Board has set out specific direction related to the Proponent’s preparation of its FEIS, summarized as follows:

- Gaps, potential biases and other issues pertaining to baseline data;
- Reconsideration of significance determination;
- Assessment of impacts on access and safety for land users;
- Discussion of use of low sulfur fuel for ships;
- Consideration of setbacks for quarries;
- Consideration of the recent listing of polar bear as a Species of Special Concern;
- Discuss bottom fast ice and subsea permafrost;
- Discuss changes to harvesting and traditional pursuits;
- Provide a description of the types of jobs and contracts available;

- Reconsideration of potential cumulative effects from current and reasonably foreseeable future developments; and
- A description of consultation undertaken with adjacent jurisdictions.

Additionally, the Board has requested that Baffinland ensure its commitment to a plain language summary version of the FEIS addresses issues raised at the Community Roundtables. The NIRB also reiterates the need for the Proponent to ensure the marine mammal baseline data and assessment of alternatives in the FEIS meets the requirements set out in the EIS Guidelines.

Baffinland is expected to respond to these specific issues in the FEIS and is further encouraged to respond directly to all of the issues that have arisen over the course of the Technical Meeting and the PHC.

### **NIRB/NPC and NIRB/NWB Coordination**

Following a review of the DEIS and the requirements of the North Baffin Regional Land Use Plan (NBRLUP) as well as the PHC, the NIRB and the Nunavut Planning Commission (NPC) are of the opinion that additional information to be included in the FEIS as directed by the Board in the enclosed PHC Decision and as may further be requested by the NPC, is necessary to satisfy the information requirements and to complete the assessment required by the NBRLUP. Once this information is available and the assessment is complete, the NPC will be in a position to provide its recommendation regarding an amendment to the NBRLUP to the responsible Ministers.

Following the technical review period and PHC, the Nunavut Water Board (NWB) has determined that the draft Type A Water Licence Application accompanying the DEIS is deficient. The deficiencies are substantive and must be addressed in Baffinland's proposed resubmission of the Type A Water Licence Application as a "stand-alone" appendix to the FEIS in order for the water licensing process to proceed. In the event that the Type A Water Licence Application submitted with the FEIS addresses these deficiencies, the NWB anticipates being in a position to hold a technical meeting in relation to that application following the NIRB's final hearing.

At this time, the NIRB thanks Baffinland and all parties for the cooperative and open dialogue that has thus far, allowed the NIRB's Review process to unfold in an efficient and effective manner. The Board looks forward to receiving Baffinland's FEIS submission in the coming year and working through the remaining steps of the Review process for the Mary River Project.

If you have any questions regarding the enclosed PHC Decision or the NIRB's Review of the Mary River Project, please don't hesitate to contact me directly at (867) 983-4608 or via email at [rbarry@nirb.ca](mailto:rbarry@nirb.ca).

Sincerely,



Ryan Barry  
Executive Director  
Nunavut Impact Review Board

cc: Sharon Ehloak, Executive Director, NPC  
Dionne Filiatrault, Executive Director, NWB  
Mary River Distribution List

Enclosed: Nunavut Impact Review Board Preliminary Hearing Conference Decision Concerning the Mary  
River Project (*December 9, 2011*)