



**NIRB File No.: 08MN053**

November 26, 2012

The Honourable John Duncan  
Minister of Aboriginal Affairs and Northern Development  
Federal Interlocutor for Métis and Non-Status Indians  
10 Wellington, 21<sup>st</sup> Floor  
Gatineau, QC K1A 0H4

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**Re: Response to Request for Clarification of Recommended Term and Condition #41 in the NIRB's Final Hearing Report for Baffinland Iron Mine Corp.'s Mary River Project Proposal**

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Dear Mr. John Duncan:

This letter is in response to your letter of November 20, 2012 requesting clarification regarding the meaning of recommended Term and Condition #41 in the Nunavut Impact Review Board's (NIRB or Board) Final Hearing Report for the Baffinland Iron Mine Corp.'s Mary River Project Proposal (Mary River Project Proposal) provided to you by the Board on September 14, 2012.

As set out in the Final Hearing Report,<sup>1</sup> the NIRB's recommended Term and Condition #41 was stated as follows:

<b>Term and Condition No.</b>	<b>41</b>
<b>Category:</b>	Freshwater Aquatic Environment – Setbacks
<b>Responsible Parties:</b>	The Proponent
<b>Project Phase:</b>	Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring
<b>Objective:</b>	To mitigate impacts of runoff into freshwater aquatic habitat.
<b>Term or Condition:</b>	The Proponent shall maintain a minimum 100-metre naturally-vegetated buffer between the high-water mark of any fish-bearing water bodies and any permanent infrastructure.
<b>Reporting Requirements:</b>	To be developed following approval of the Project by the Minister.

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<sup>1</sup> See NIRB File No.: 08MN053, Final Hearing Report for the Baffinland Iron Mines Corporation's Mary River Project Proposal, September 14, 2012, at p. 253 and also the more detailed discussion of the issue and the Board's conclusions and recommendations at pp. 99-104.

As indicated in the Minister's letter, the Board's use of the phrase "any permanent infrastructure" has created confusion, as that term could be interpreted to include pump houses, the railway servicing the mine, permanent access roads and possibly other necessary works, notwithstanding that the Board clearly references in the discussion of these issues in the Final Hearing Report that the railway unavoidably will be constructed on the edge of several lakes because the railway cannot turn sharp corners. Further, as summarized in the letter it is "clear that the railway will need to pass near or cross above some fish-bearing water bodies to ensure safe rail design". Therefore, as the Board was clearly aware that the railway was planned to be constructed within the proposed 100 metre setback zone, the Minister questioned whether the Board's choice of words in recommended Term and Condition #41 accurately conveyed the Board's intended meaning as it would render the construction of the railway along approximately 36 kilometres of the proposed route impossible.

At the outset, the NIRB wishes to emphasize that generally in the development of the Board's recommended terms and conditions it is always the Board's intention that recommended terms and conditions be reviewed in the context of the entirety of the NIRB's final hearing report, in accordance with the Board's stated objectives and in concert with all other recommended terms and conditions. Further, the Board also recognizes that the recommended terms and conditions are only one part of an integrated regulatory regime established under the Nunavut Land Claims Agreement that progresses from the assessment of land use planning conformity to environmental assessment to permitting, licensing, authorization or other forms of regulatory approvals and monitoring. As such, the authorizing agencies responsible for the implementation of the terms and conditions contained within a final hearing report approved by the Minister also provide the Board with valuable input during the Project Certificate Workshop to ensure that the terms and conditions included in the Project Certificate are refined, understood, consistently interpreted and clarified for the agencies responsible for implementing them. Of specific relevance to Term and Condition #41, in the Final Hearing Report the Board expressly acknowledged the jurisdiction of water licensing and other respective regulatory authorities to consider freshwater aquatic effects in greater detail at the licensing and permitting stage.

Applying this approach to assessing the Board's intentions with respect to Term and Condition #41 specifically, when considered in the context of the entirety of the Final Hearing Report and its more than 180 other recommended Terms and Conditions, the Board regrettably acknowledges that the choice of words "any permanent infrastructure" contained in Term and Condition #41 does not adequately communicate the Board's true intentions. The Board recognizes that if "any permanent infrastructure" is construed to apply to the railway and roads, this term and condition would be potentially inconsistent with the evidence heard by the Board that the railway would be constructed on the edge of several water bodies and with other terms and conditions throughout the Final Hearing Report, in particular those addressed by the Board in the discussions of Hydrology and Hydrogeology and Groundwater/Surface Waters contained in Sections 4.4 and 4.5, that are premised on the project components associated with transportation (railway, railway service road and access roads) being constructed in close proximity to and in fact with numerous crossings of fish bearing water bodies. Clearly, it was not the intention of the Board to introduce such inconsistency under Term and Condition #41.

Recognizing that the Board's objective with Term and Condition #41 was to limit the impacts of potentially detrimental runoff from entering into the freshwater aquatic habitat, and that this condition was intended to be consistent with other recommended terms and conditions designed to minimize impacts to flow and quantity of surface and groundwater, the Board clarifies that Term and Condition #41 was not intended to apply broadly to all project components, but rather was intended to reflect a setback from any permanent infrastructure associated with the quarry components of the Project with the potential for acid rock drainage/metal leaching. It should be noted that this clarification of the Board's intention is consistent with the proposed setback advocated by Environment Canada for quarries accessed along the railway that would have acid rock drainage potential.<sup>2</sup>

Consequently, the clarified Term and Condition #41 should read as follows:

<b>Term and Condition No.</b>	<b>41</b>
<b>Category:</b>	Freshwater Aquatic Environment – Setbacks
<b>Responsible Parties:</b>	The Proponent
<b>Project Phase:</b>	Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring
<b>Objective:</b>	To mitigate impacts of runoff into freshwater aquatic habitat.
<b>Term or Condition:</b>	Unless otherwise approved by regulatory authorities, the Proponent shall maintain a minimum 100-metre naturally-vegetated buffer between the high-water mark of any fish-bearing water bodies and any permanent quarries with potential for acid rock drainage or metal leaching.
<b>Reporting Requirements:</b>	To be developed following approval of the Project by the Minister.

In providing this clarification, the Board also affirms that this does not, in any way, constitute a reconsideration of the contents, conclusions or recommendations in the Final Hearing Report. It is unfortunate that the original language chosen for Term and Condition #41 did not accurately convey the Board's true intentions, and the Board regrets any difficulties this may have caused to participants in this process. However, as all participants can appreciate, given the scale, scope and extent of the Board's Final Hearing Report and the timelines associated with its production, imperfect expression of the Board's intention did occur, and the Board appreciates the opportunity to provide clarity in this regard. Should the Minister accept the Board's recommendation and approve the Project, through the development of a Project Certificate the NIRB would ensure that all associated terms and conditions are clearly understood by the parties and can be fully implemented and incorporated into applicable regulatory instruments.

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<sup>2</sup> See the quotation from Environment Canada and cited by the Board in NIRB File No.: 08MN053, Final Hearing Report for the Baffinland Iron Mines Corporation's Mary River Project Proposal, September 14, 2012, at p. 87.

Sincerely,



Elizabeth Copland  
Chairperson  
Nunavut Impact Review Board

cc: The Honourable Keith Ashfield, PC, MP  
The Honourable Peter Kent, PC, MP  
The Honourable Denis Lebel, PC, MP  
The Honourable Joe Oliver, PC, MP  
Ms. Cathy Towtongie, President, Nunavut Tunngavik Incorporated  
Ms. Okalik Eegeesiak, President, Qikiqtani Inuit Association  
Mr. Jobie Tukkiapik, President, Makivik Corporation  
Mr. Tom Paddon, President and CEO, Baffinland Iron Mines Corporation  
Mr. Erik Madsen, Vice President of SD, Health, Safety & Environment, Baffinland Iron Mines Corp.  
Mary River Project Proposal Distribution List