



**NIRB File No. 08MN053**

January 14, 2013

Erik Madsen  
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*Sent via email: [erik.madsen@baffinland.com](mailto:erik.madsen@baffinland.com)*

**Re: Acknowledgement of Request to Amend Project Certificate No. 005 – Mary River Project Received From Baffinland Iron Mines Corporation on January 10, 2013**

On January 13, 2013 the Nunavut Impact Review Board (NIRB or Board) received the enclosed correspondence from Baffinland Iron Mines Corporation (Baffinland or the Proponent) which indicated that, due to various business drivers, Baffinland proposes to make changes to the schedule and some activities in the initial stages of project development associated with the Mary River Project Proposal for which the NIRB recently issued Project Certificate No. 005 (the 'Project Certificate').

#### SUMMARY OF THE REQUEST

In its request Baffinland indicated that although the Proponent remains committed in the long-term to developing the Project as authorized in the Project Certificate, in the short term Baffinland proposes to change some development activities and project timelines to accommodate an "Early Revenue Phase" which would include development of a nominal 3.5 million tonne per annum (Mt/a) road haulage operation from the Mary River mine site to a port facility at Milne Inlet for shipping of iron ore during the open water season only. As noted by Baffinland, this development option was presented previously as a project alternative, and was included within the initial technical review of the Draft Environmental Impact Statement for the Mary River Project Proposal. However, following the submission of Information Requests by parties this alternative was removed from further consideration by Baffinland and was not subsequently included in the Final Environmental Impact Statement and was not considered by the NIRB during the Final Hearing in respect of the Project Proposal. As this alternative was not considered during the Final Hearing, the current terms and conditions in the Project Certificate do not directly address the potential for impacts associated with Baffinland's proposed implementation of this development scenario.

Baffinland further outlined its understanding that the proposed modifications to the project proposal would necessitate changes to the existing Project Certificate and consequently proposed to submit an addendum to the Final Impact Assessment Statement to now include this option. Further, Baffinland's proposed addendum would also take into account the relevant comments and information requests of the parties submitted during their review of the 2011 Draft Environmental Impact Statement.

#### RECONSIDERATION OF THE TERMS AND CONDITIONS OF PROJECT CERTIFICATE

As all parties are aware, the current Project Certificate as issued on December 28, 2012 is the product of a rigorous review process which provided opportunities for public comment through both written submissions and participation in the Final Hearing associated with the Project Proposal. However, the development review process under the Nunavut Land Claims Agreement (NLCA) also recognizes that the Project Certificate is not a static document, and that to be effective, a Project Certificate must reflect the actual circumstances of a Project Proposal as those circumstances evolve and change. Sections 12.8.2 and 12.8.3 of the NLCA set out how the terms and conditions in a given Project Certificate may be reconsidered:

12.8.2 NIRB may on its own account or upon application by a DIO, the proponent, or other interests, reconsider the terms and conditions contained in the NIRB certificate if it is established that:

- (a) the terms and conditions are not achieving their purpose;
- (b) the circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the certificate was issued; or
- (c) there are technological developments or new information which provide a more efficient method of accomplishing the purpose of the terms and conditions.

12.8.3 Where the Minister determines that any of the conditions in Sub-sections 12.8.2(a), (b) or (c) have been established, NIRB shall reconsider the terms and conditions contained in a certificate, and NIRB shall produce a report of its reconsideration. The Minister may accept, reject or vary that report only on the grounds specified in Section 12.6.13. NIRB shall amend its certificate to reflect any changes as accepted, rejected or varied by the Minister.

Where the NIRB has established that terms and conditions within a Project Certificate require reconsideration, the NIRB would make application to the Minister to reopen the Project Certificate. Following confirmation from the Minister that the need for a formal reconsideration has been established, the Board would initiate a public review of the application, including technical meetings and written or oral hearings as deemed necessary in accordance with the NIRB's Rules of Procedures.<sup>1</sup> The project proponent would be required to provide any information determined to be necessary to facilitate the Project Certificate reconsideration. At

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<sup>1</sup> NIRB's Rules of Procedures (2009) are available online from the Board's public registry at the following location: <http://ftp.nirb.ca/06-RULES/>

the conclusion of this review process the Board would provide a report of its reconsideration to the Minister for consideration and the NIRB would amend the Project Certificate as necessary based on the Minister's acceptance or variance of this report.

#### REQUEST FOR COMMENTS

Reflecting the NIRB's jurisdiction to reconsider the terms and conditions of an existing Project Certificate under Article 12 of the NLCA and the important role of public and technical comment submissions that supported the development of the terms and conditions in the existing Project Certificate, the NIRB is seeking comments on Baffinland's request from parties and agencies with jurisdiction, authority and/or licences and approvals associated with the Mary River Project Proposal prior to determining whether the proposed changes warrant reconsideration of the existing Project Certificate in accordance with NLCA Section 12.8.2. In asking for comments at this point, the NIRB acknowledges that Baffinland has indicated considerably more detail regarding the proposed amendments to the Project Proposal would be provided in future, and the NIRB notes that if it establishes that the terms and conditions of the Project Certificate are to be reconsidered it is anticipated that a comprehensive submission in the form of an update or addendum to the Final Environmental Impact Statement would be required to support the required technical review. The NIRB would, at that time, solicit additional comments from the parties with respect to the potential for ecosystemic and socio-economic impacts associated with Baffinland's proposed amendment.

By copy of this letter, the NIRB invites parties with jurisdiction and members of the public to provide comments to the Board with respect to Baffinland's request for a reconsideration of the terms and conditions in Project Certificate 005, and specifically, the Board asks for comments on the following:

- Whether the proposed changes, as presented in the request meet the requirement for reconsideration as set out in the NLCA, Section 12.8.2 (a), (b), or (c), and if so, which provisions of the NLCA trigger the reconsideration;
- Whether, at this point the parties have identified any specific terms and conditions within Project Certificate No. 005 that would need to be reconsidered or amended to reflect the Early Revenue Option;
- Whether a reconsideration of the Project Certificate terms and conditions is likely to arouse significant public concern, and if so, a description of the basis for the concern;
- Whether parties have comments or concerns regarding the potential format of the update or addendum to the existing Final Environmental Impact Statement required to support the reconsideration of the Project Certificate; and,
- Any matter of importance to the Party related to the request to reconsider the terms and conditions of the Project Certificate by the NIRB.

The NIRB requests that interested parties submit comments directly to the NIRB via email to [info@nirb.ca](mailto:info@nirb.ca) or via fax to (867) 983-2594 on or before **February 4, 2013**.

## NEXT STEPS

Following the Board's receipt and review of comments received, the Board will: (a) determine whether the proposed changes are sufficient to warrant reconsideration under Section 12.8.2 of the NLCA; and (b) if the Board determines that the Project Certificate terms and conditions must be reconsidered, the NIRB would put seek support from the Minister of Aboriginal Affairs and Northern Development (the Minister) to initiate the formal reconsideration of the Project Certificate terms and conditions. In the event a reconsideration of existing Project Certificate terms and conditions is recommended by the Board and supported by the Minister, the Board would provide all parties with further direction on next steps and associated timelines at that time.

Should you have any questions or require further clarification, please contact Amanda Hanson, Director of Technical Services at (867) 983-4615 or via email at [ahanson@nirb.ca](mailto:ahanson@nirb.ca).

Sincerely,



Ryan Barry  
Executive Director  
Nunavut Impact Review Board

cc: Sharon Ehloak, Nunavut Planning Commission  
Damien Côté, Nunavut Water Board  
Stephen Williamson-Bathory, Qikiqtani Inuit Association  
Pauloosie Suvega, Government of Nunavut  
Robin Aitken, Aboriginal Affairs and Northern Development Canada  
Luc Fortin, Canadian Transportation Agency  
Mark Dahl, Environment Canada  
Derrick Moggy, Fisheries and Oceans Canada  
Rob Johnstone, Natural Resources Canada  
Meighan Andrews, Transport Canada  
Mary River Distribution List

Enclosed: Baffinland Letter to the NIRB Re PC Amendment Request (January 10, 2013)