



NIRB File No.: 08MN053

February 11, 2013

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

Sent via email, fax and regular mail: duncan.j@parl.gc.ca; minister@aandc.gc.ca

Re: The NIRB's Determination With Respect to Baffinland Iron Mines Corporation's Request to Reconsider Terms and Conditions in Project Certificate No. 005 for the Mary River Project

Dear Mr. John Duncan:

By way of this letter, the Nunavut Impact Review Board (NIRB or Board) is providing an update to the Minister in relation to the Board's determination under Article 12, Part 8, Section 12.8.2(b) of the Nunavut Land Claims Agreement (NLCA) that it is appropriate and advisable for the Board to reconsider the Terms and Conditions of Project Certificate No. 005 issued by the Board to Baffinland Iron Mines Corporation (Baffinland or the Proponent) on December 28, 2012 for the Mary River Project (NIRB File No. 08MN053).

In addition, as set out in Article 12, Part 8, Sections 12.8.3 and 12.5.4 of the NLCA, the Board is also requesting that the Minister provide the Board with any direction he may have regarding priorities and reasonable time frames associated with the Board's reconsideration of the Terms and Conditions of Project Certificate No. 005.

In making the Board's determination, the Board has concluded that:

- the changes in the initial stages of project development to the project schedule and to specific activities under the Early Revenue Phase proposed in Baffinland's January 13, 2013 letter to the Board are integrally linked to the Mary River Project as approved under Project Certificate No. 005 and any potential ecosystemic and socioeconomic effects associated with these changes are best addressed under the existing Project Certificate No. 005;
- the amendments to specific project components and activities under the Early Revenue Phase are not components and activities which have been subject to impact

assessment by the Board and also have not been subject to full technical review by the parties, public comment or approval by the various responsible authorities; and

- the circumstances relating to the Project are now significantly different than were considered at the time the Board issued its Final Hearing Report and Recommendations in September 2012¹ and subsequently, when, as directed by the Minister, the Board issued Project Certificate No. 005 on the basis of the Board's Report and Recommendations.

Further, the Board notes that the Nunavut Planning Commission (NPC) indicated to the Board in correspondence on February 7, 2013 that:

The NPC would remind the NIRB that the new development option as outlined in your January 14th correspondence and referred to as a "project alternative included within the initial technical review of the Draft Environmental Impact Statement", has not been reviewed by the NPC for conformity with the applicable land use plan. The different routing, as proposed in the January 14th, 2013 request for amendment, was not considered in the NPC's positive conformity determination issued on April 30th, 2008.

Reflecting the NPC's jurisdiction, the NIRB will require confirmation from the NPC that the proposed Project amendment conforms to the requirements of the North Baffin Regional Land Use Plan (NBRLUP) before the NIRB will initiate the Board's next steps in the reconsideration process.

The Board also notes that the Nunavut Water Board (NWB) is currently proceeding with the water licensing associated with the Project as assessed by the NIRB to date and as approved under Project Certificate No. 005. As summarized by the NWB in its recent Pre-Hearing Conference Decision:

...BIMC [Baffinland] clearly stated that while the NIRB's consideration of the amendment request continues, BIMC will proceed to obtain the regulatory permits and authorizations consistent with the project as reviewed by the NIRB and authorized by the current Project Certificate. BIMC's request to the NIRB does not, therefore affect the NWB's jurisdiction to review the existing Type "A" Water Licence Application as authorized under the current Project Certificate. The NWB does, however note that if any changes are subsequently required to the scope of the existing Type "A" Water Licence Application, the NWB would not consider any such amendments at the upcoming Public Hearing and the NWB's consideration of an amendment would only occur AFTER the NIRB had concluded its process for considering the request to amend the Project Certificate and, if it was considered necessary, any revisions and/or additions to the existing Project Certificate had been issued by the NIRB and approved by the Minister.²

¹ NIRB File No.: 08MN053, Final Hearing Report for the Baffinland Iron Mines Corporation's Mary River Project Proposal, September 14, 2012.

² NWB File No.: 2AM-MRY, Pre-Hearing Conference Decision Regarding Application for Type "A" Water Licence by Baffinland Iron Mines Corporation for the Mary River Project, January 25, 2013 at pp. 16-17.

As with the Board's Review of the original Project, during the reconsideration process the NIRB is committed to maintaining open communication and sharing of technical expertise with the NPC and the NWB in a manner that recognizes our respective jurisdiction, mandates and processes under the NLCA and supports timely and efficient participation and collaboration.

LEGAL FRAMEWORK

As established under Article 12, Part 8: Flexibility in Relation to Certificates, where, as is the case with respect to the Mary River Project, the NIRB has issued a project certificate, changes may be considered by the NIRB in accordance with the following process:

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.*

The Minister could also direct the NIRB to reconsider terms and conditions in accordance with Article 12, Part 8, Section 12.8.3:

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.

As established under Article 12, Sections 12.8.4 and 12.5.4, regardless of whether the NIRB's reconsideration is initiated under Sections 12.8.2 or 12.8.3, with respect to the resulting reconsideration, the Minister may propose priorities and reasonable time frames for completion, as follows:

12.8.4 For greater certainty, Section 12.5.4 applies to a reconsideration by NIRB pursuant to Section 12.8.2 or 12.8.3.

12.5.4 The Minister may propose priorities and reasonable time frames for completion of the reviews.

Given that the reconsideration request was initiated by Baffinland in its letter of January 13, 2013, the Board has undertaken its consideration of the request under the jurisdiction granted to the NIRB under the NLCA, Article 12, Part 8, Section 12.8.2.

PROCEDURAL HISTORY REGARDING THE RECONSIDERATION REQUEST

On January 13, 2013 the NIRB received correspondence from Baffinland indicating that due to various business drivers, Baffinland was proposing to make changes to the schedule and specific activities in the initial stages of project development associated with the Mary River Project. Further, Baffinland conceded that these changes to the Project could potentially necessitate a reconsideration of the Terms and Conditions within Project Certificate No. 005 previously issued by the NIRB on December 28, 2012 for the Mary River Project.

On January 14, 2013 the NIRB requested that interested parties review a description of Baffinland's proposed amendments to the Mary River Project (collectively referred to by the Proponent as the "Early Revenue Phase") and provide comments to the NIRB by February 4, 2013 (later extended to February 5, 2013 at the request of parties) regarding the following:

- Whether the proposed changes as presented in the request meet the requirement for reconsideration as set out in the Nunavut Land Claims Agreement (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 had identified any specific Terms and Conditions within Project Certificate No. 005 that would need to be reconsidered or amended to reflect the Early Revenue Phase;
- Whether a reconsideration of the Project Certificate Terms and Conditions would be likely to arouse significant public concern, and if so, a description of the basis for the concern;
- Whether parties had 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.

On or before February 5, 2013 the NIRB received comments from the following parties with respect to Baffinland's proposal to amend the Project to accommodate the changes required under the Early Revenue Phase:

- | | |
|--|-------------------------------|
| ▪ Baffinland Iron Mines Corporation | ▪ Environment Canada |
| ▪ Qikiqtani Inuit Association | ▪ Fisheries and Oceans Canada |
| ▪ Government of Nunavut | ▪ Natural Resources Canada |
| ▪ Aboriginal Affairs and Northern Development Canada | ▪ Parks Canada |
| ▪ Canadian Arctic Resource Committee | ▪ Transport Canada |
| ▪ Canadian Coast Guard | ▪ Hamlet of Pond Inlet |
| ▪ Canadian Transportation Agency | ▪ Hamlet of Igloolik |
| | ▪ Paniloo Sangoya |

On February 7, 2013 the NIRB also received a submission from the Nunavut Planning Commission indicating that a conformity determination pursuant to the North Baffin Land Use Plan may be required for the amended project components and activities as presented by Baffinland.

All materials received and pertaining to Baffinland's Project amendment request, including submissions received in response to the Board's January 14, 2013 request for comments are available from the NIRB's online public registry at:

<http://ftp.nirb.ca/03-MONITORING/08MN053-MARY%20RIVER%20IRON%20ORE%20MINE/01-PROJECT%20CERTIFICATE/04-AMENDMENTS/>

CHANGES TO THE PROJECT IN THE EARLY REVENUE PHASE PROPOSAL

As originally reviewed by the NIRB, and approved under the Project Certificate No. 005, the Mary River Project involved the development of an open pit iron ore mine on northern Baffin Island, with associated infrastructure to include a tote road between Milne Inlet and a mine site at Mary River, ports at Milne Inlet and Steensby Inlet and a railway connecting the mine to the Steensby port. Iron ore would be transported from the mine site via the railway to the port at Steensby Inlet, with year-round shipping of ore through Foxe Basin and Hudson Strait to markets in Europe using custom designed ore carriers.

Baffinland's January 13, 2013 proposal to incorporate an Early Revenue Phase into the development plans for the Mary River Project involve the proposed amendment of specific project components and activities to allow for some reduced mining activity to take place prior to the construction of the railway and full facilities at the Steensby Port, with Baffinland proposing to use the Milne Inlet tote road to transport ore to Milne Inlet for shipment during the open water season only. It is the Board's understanding that Baffinland's Early Revenue Phase is similar to the "Road Haulage Option" which was an alternative means of carrying out the project first proposed by Baffinland in September 2010. In November 2010, the NIRB issued an Addendum to the Environmental Impact Statement Guidelines for the Mary River Project Review to include the requirements applicable to the assessment of the Road Haulage Option alternative, and in January 2011, Baffinland's Draft Environmental Impact Statement (DEIS) submission contained assessment information addressing the Road Haulage Option.

In March 2011, parties provided Information Requests (IRs) about the DEIS, including the Road Haulage Option, however before providing a response to the IRs specifically relating to the Road Haulage Option, Baffinland confirmed on April 15, 2011 that the Road Haulage Option would

not be pursued as part of the Mary River Project Review and so the Road Haulage Option was not discussed further in the remainder of the Review. Consequently, although the NIRB issued guidance in the Addendum to the EIS Guidelines for the Project to guide the potential assessment of the Road Haulage Option, and parties provided initial IRs associated with this option, the amendments to specific project components and activities necessary to accommodate the Early Revenue Phase of project development have not, to date, been subject to the full assessment process, technical review or public comment.

COMMENTS AND CONCERNS

The following Table 1 represents only a very brief *summary* of the comments and concerns received during the public commenting period on Baffinland's reconsideration request; please note that the original comment submissions have been included in their entirety in [Appendix A](#).

Table 1:
Baffinland Reconsideration Request
Summary of Key Comments, Concerns and Issues

Party	12.8.2 Trigger	Amended Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Baffinland Iron Mines Corporation	(Yes) 12.8.2 (a), (b) and (c) – changed current global financial environment and capital development costs	No specific amendments to existing terms and conditions, but anticipate some terms and conditions need to be amended or supplemented to authorize the construction and operation of the components required to authorize the Early Revenue Phase	Confident that the NIRB reconsideration process will address public concern	Should follow the “Addendum to the Guidelines for the Preparation of an Environmental Impact Assessment for Baffinland Iron Mines Corporation’s Mary River Project” respecting the Road Haulage Option alternative	The proposed Early Revenue Phase (ERP) should be seen as incremental to the full Project as authorized, and the reconsideration process should focus on the ERP itself, without re-opening issues related to the full Project as reflected under the Project Certificate
Qikiqtani Inuit Association	Insufficient information in Baffinland’s request for QIA to identify trigger	Unable to determine if specific terms and conditions should be reconsidered or amended; do however anticipate that #87 and 99, as well as other terms and conditions that are currently limited to Steensby Inlet may need to add Milne Inlet	Yes	Addendum should contain updated baseline information, impact predictions, management, and mitigation plans associated with the proposed project changes as well as identifying where there are deviations from the original FEIS	Once updated information received from Baffinland, the QIA reserves right to file its own request to reconsider terms and conditions. Identified that intervenor funding may be required to ensure full participation

Party	12.8.2 Trigger	Amended Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Government of Nunavut	Unable to determine whether circumstances differ <u>significantly</u> from those at time PC was issued	Unable to comment at this time	Yes	Submit a single document setting out all the relevant information relating to the proposed development activities and the potential ecosystemic and socio-economic impacts of the project as amended	
Aboriginal Affairs and Northern Development Canada	Although not clearly stated in Baffinland's request, appears that changes in global financial markets are being put forward as the 12.8.2(b) reconsideration trigger	Premature to identify specific Terms and Conditions that need to be amended, however, anticipate that those referencing monitoring plans, adaptive management strategies, baseline studies, model development or working groups may need to be amended and new terms and conditions may need to be added to adequately mitigate any potential environmental or socio-economic impacts associated with new and revised project components and activities	Yes and recommends that community consultation activities be undertaken	In addition to requiring assessment of new project components and activities, Baffinland should be required to clearly identify: which components of the approved project design are delayed (and for how long); which components of the approved project design are, or might be, scaled back, removed or otherwise changed, (and how); and the corresponding effect on all FEIS predictions and evidence presented in the course of the original Review	Propose the following steps if reconsideration proceeds: Proponent to submit a detailed description of the revised project and detailed description of how revised project differs from the approved project; Community consultation on the proposed changes to the project; Proponent submission of revised EIS document; Information request stage in relation to the EIS document; Technical meeting (if required); and Public hearing

Party	12.8.2 Trigger	Amended Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Canadian Arctic Resource Committee	12.8.2(a) and (b)		Yes	Update or amendment to the FEIS could consider an alternate route to mitigate the Caribou calving concern and the completion of studies to assess the vulnerability of Caribou to the amendments proposed by Baffinland	
Canadian Coast Guard		Clarification of respective roles and responsibilities in light of revised project			Whether scaled back project will have effects on Baffinland's emergency response capability initially
Canadian Transportation Agency	Does not alter environmental impacts of railway component so no 12.8.2 trigger with respect to CTA's jurisdiction				
Environment Canada	Yes, 12.8.2(b)	Cannot supply complete list at this time, but anticipate that #7, 8, 9, 10, 83, 86, 97, 99 and 176 will need to be revised and that new terms and conditions will need to be added		Stand alone format that includes general listing of not only terms and conditions affected by revised project but also list of commitments affected by revised project	

Party	12.8.2 Trigger	Amended Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Fisheries and Oceans Canada	Yes, 12.8.2(b)	Many of the terms and conditions related to the marine environment and marine mammals would need to be reconsidered, particularly from the perspective of geographic application and adequacy and anticipate that new terms will need to be added	Yes, concern regarding potential impacts on marine VECs from open water shipping of ore through Milne Inlet and effects on harvesting	Addendum should not only consider the components and activities under the Early Revenue Phase, but should also include consideration of any potential changes to the remaining project and its various phases, and whether the impacts addressed in the previous review remain valid	
Natural Resources Canada	Yes, 12.8.2(b)	Anticipate that amendments to 1, 25, 26, 28, 83, 81 and 84 may be required	Possibly ship wake effects may cause public concern (raised with respect to Steensby Inlet for Project at Final Hearing and possibly at Milne Inlet with revised Project)		
Parks Canada	Yes, 12.8.2(b)	Anticipate that amendments to #8, 9, 74, 77, 78, 80, 81, 83, 85 to 91, 93 to 101, 103, 105, and 107-115 may need to be considered and that new terms and conditions will also need to be added to ensure that all potential impacts are mitigated	Yes	Stand alone addendum that indicates which terms and conditions Baffinland will be applying specifically to the amended portion of the project	

Party	12.8.2 Trigger	Amended Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Transport Canada	Yes, 12.8.2(b)	Question whether #95 (reference to overwintering fuel vessel at Milne Port) is necessary under revised project	Yes, additional number of transits into and out of Milne Inlet	Separate addendum to FEIS outlining all construction, operation and decommissioning associated with the components of the Early Revenue Phase, as well as listing of existing Terms and Conditions that would apply to the ERP	Information regarding type and size of ore shipment vessels, port of origin and number of expected transits through Milne Inlet
Hamlet of Pond Inlet		There are no terms and conditions to govern stockpiling of ore and shipping of ore through Milne Inlet as that option had been removed from final EIS	Yes concerns about potential environmental effects of increased shipping through Milne Inlet on Inuit and all residents of North Baffin		Amendments require public hearing as they were not dealt with at the Final Hearing for the project
Hamlet of Igloolik	Yes, 12.8.2(a), (b) and/or (c)	Conditions of the Project Certificate previously identified by the NIRB concerning conducting marine baseline studies and the establishment of an effective marine monitoring program remain vital, and process must ensure they are properly implemented and carried out to the satisfaction of all parties involved	Yes shift in shipping activity from Steensby Inlet to Milne Inlet highlights importance of consultation with communities	Must include detailed information about new employment and business opportunities for Inuit; implications for training and work preparedness plans; and implications for monitoring and mitigation plans. Information contained in the addendum to the FEIS must be communicated effectively to Inuit, including through translation, media and local meetings	Important to set a good precedent for the reconsideration process, to uphold the technical rigour of, and public confidence in, the impact assessment and consultation process in anticipation of future changes at different project phases

Party	12.8.2 Trigger	Amended Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Paniloo Sangoya		Based on information provided cannot determine if specific terms and conditions should be amended; specifically require more information regarding potential environment effects on freshwater and air quality and effects to marine mammals and Inuit harvesters due to prolonged trucking and storage of ore and suggested changes to marine transportation	Yes	Addendum containing updated baseline information, impact predictions, management and mitigation plans associated with the project changes should be filed with the NIRB	People of Pond Inlet were not fully aware of the aspects of the DEIS that applied to Milne Inlet

BOARD DETERMINATION

Reflecting the Board's review of Baffinland's description of the Early Revenue Phase, the Addendum to the EIS Guidelines to address the Road Haulage Option, Project Certificate No. 005, the NIRB's Final Hearing Report for the Mary River Project,³ and the comments and concerns received during the public commenting period regarding the changes required to accommodate the Early Revenue Phase, the Board has made the following determinations.

The changes in the initial stages of project development to the project schedule and to specific activities under the Early Revenue Phase are integrally linked to the Mary River Project as approved under Project Certificate No. 005. Reflecting this linkage, the Board has determined that any potential ecosystemic and socioeconomic effects associated with the changes to the project as proposed in the Early Revenue Phase are most appropriately assessed pursuant to NLCA Section 12.8.2. In making this determination, the Board has decided that the Early Revenue Phase does not constitute a distinct, stand alone project that should be subject to a screening and review process separately from the Project as approved under Project Certificate No. 005.

As outlined above, although at the DEIS stage of the Mary River Project Review some information and discussion of the Road Haulage Option, which is very similar to the Early Revenue Phase was included in the Review, as noted by several parties providing comments, given that the Road Haulage Option was withdrawn from the Review at the DEIS stage and prior to the Proponent addressing IRs, the amendments to specific project components and activities under the Early Revenue Phase were not fully assessed, including not being subject to full technical review by the parties, public comment during the Final Hearing or approval by the various responsible authorities.

The Board accepts the submissions of several commenting parties and the Proponent in support of its request to the Board to reconsider the terms and conditions of Project Certificate No. 005, that the circumstances, and in particular the global economic circumstances, including global financial markets and commodity prices relevant to the Project are now significantly different than were considered at the time the Board issued its Final Hearing Report and Recommendations in September 2012 and subsequently, when, as directed by the Minister, the Board issued Project Certificate No. 005 on the basis of the Board's Report and Recommendations.

Reflecting these considerations, the Board, finds that under Article 12, Part 8, Section 12.8.2(b) of the NLCA it is appropriate and advisable for the Board to reconsider the Terms and Conditions of Project Certificate No. 005 for the Mary River Project. In addition, recognizing the Minister's jurisdiction as set out in Article 12, Sections 12.8.3 and 12.5.4 of the NLCA, the Board is also requesting that the Minister provide the Board with any direction he may have regarding priorities and reasonable time frames associated with the Board's reconsideration of the Terms and Conditions of Project Certificate No. 005, and the NIRB looks forward to receiving the Minister's direction in this regard.

³ NIRB File No.: 08MN053, Final Hearing Report for the Baffinland Iron Mines Corporation's Mary River Project Proposal, September 14, 2012.

ANTICIPATED NEXT STEPS IN THE NIRB'S RECONSIDERATION

Under separate cover, the NIRB will be providing a letter to Baffinland, copied to all parties that outlines in greater detail the process and technical requirements applicable to the next steps in the NIRB's reconsideration in this case. In addition, the NIRB will also be responding directly to the Qikiqtani Inuit Association (QIA) regarding a number of specific process questions provided by the QIA in its comment submissions associated with Baffinland's request. However, for the Minister's information, as it may be relevant to the Minister if he chooses to provide direction regarding priorities and timelines as provided for in Section 12.5.4 of the NLCA, the NIRB offers the following general outline of the reconsideration process proposed by the NIRB.

The NIRB will request that Baffinland prepare a comprehensive addendum to the previously filed FEIS that is consistent with the Addendum to the EIS Guidelines for the "Road Haulage Option." Upon receipt of Baffinland's Addendum to the Final EIS and the receipt of NPC's conformity determination with respect to whether the Project as revised under the Early Revenue Phase conforms to the North Baffin Region Land Use Plan, the NIRB will conduct an internal check to assess the conformity of Baffinland's submission with the EIS Guidelines and Addendum to the EIS Guidelines.

If the Board determines that the submission conforms to the requirements, the Board would initiate a public technical review period. The Board would also facilitate public information sessions in potentially affected communities and possibly a meeting of technical experts. Next, after the Board has provided proper public notice, the Board would conduct a Final Hearing and Community Roundtable Session. Following the completion of these steps, the Board would prepare a report for the Minister's consideration pursuant to NLCA 12.8.3 summarizing the outcome of the NIRB's reconsideration, and if applicable, any recommendations in relation to amendments and additions to the Terms and Conditions of Project Certificate No. 005.

In closing, the NIRB appreciates the Minister's consideration and on-going support for the NIRB's reconsideration of Project Certificate No. 005 and looks forward to any direction the Minister wishes to provide to the Board regarding priorities and timelines associated with this reconsideration.

If you have any questions regarding this matter, please contact the NIRB's Executive Director, Ryan Barry, at his direct line: (867) 983-4608 or via email at: rbarry@nirb.ca.

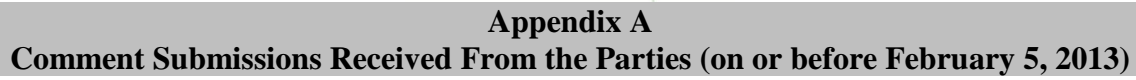
Sincerely,



Elizabeth Copland
Chairperson
Nunavut Impact Review Board

cc: Brian Aglukark, Nunavut Planning Commission
Dave Hohnstein, Nunavut Water Board
Stephen Williamson-Bathory, Qikiqtani Inuit Association
Pauloosie Suvega, Government of Nunavut
Alain Grenier, Aboriginal Affairs and Northern Development Canada
Mark Dahl, Environment Canada
Derrick Moggy, Fisheries and Oceans Canada
Rob Johnstone, Natural Resources Canada
Meighan Andrews, Transport Canada
Mary River Distribution List

Attachments: Appendix A: Comment Submissions Received By the Board (on or before February 5, 2013)





February 5, 2013

Mr. Ryan Barry
Executive Director
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay, NU, X0B 0C0

Dear Ryan:

Re: Baffinland Response to NIRB Respecting the Request to Amend Project Certificate No. 005 – Mary River Project

Thank you for your correspondence from January 14, 2013 requesting comments regarding Baffinland Iron Mine's (Baffinland) request to amend Project Certificate No. 005 for the Mary River Project (NIRB File No. 08MN053). In particular, these comments address the proposed Early Revenue Phase (ERP) summarized in our letter of January 10, 2013.

In the following, we provide comments on the five points outlined in your request of January 14, 2013:

- *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.*

For reference, Section 12.8.2 of the NLCA is as follows:

"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.”

In our submission, the proposed changes of the ERP meet the requirement for reconsideration under Sections 12.8.2 (b) and (c).

With respect to Section 12.8.2 (b), our letter of January 10, 2013 and Appendix A to that letter sets out how the circumstances relating to the Project are significantly different from those anticipated at the time that the NIRB review process was commenced in 2008, the filing of the Final EIS in February 2012, the Final Hearing in July of 2012, and the issuance of the Project Certificate on December 28, 2012. With respect to Section 12.8.2 (c), Baffinland is proposing a phased approach using road haulage to Milne Port in the early phase as a more efficient method of accomplishing the full Project.

The change in circumstances relating to the Project includes the current global financial environment and the large development capital costs for the full Mary River Project. Taking these changed circumstances into account, the Board of Directors made a decision to develop a phased strategy approach that will initially see a first development phase with reduced upfront capital requirements and shortened construction duration such that production and revenue generation are able to commence sooner with the objective of facilitating the second, larger Rail phase (as described in the FEIS) of the Project at a later date. Commencing the development of the Project through the ERP will be important in allowing for training, employment, and business opportunities for the region to commence in 2013 and to allow all parties to be in a stronger position to realize maximum benefits once the second, larger phase of development proceeds.

The provisions of the Nunavut Land Claims Agreement (NLCA) which would trigger the reconsideration are the determination by the Nunavut Impact Review Board (NIRB), under Section 12.8.2, or the determination of the Minister under Section 12.8.3, that any of the conditions in Sections 12.8.2(a), (b) or (c) have been established. In that event, NIRB is required to reconsider the terms and conditions

contained in the Project Certificate, and to produce a report of its reconsideration to the Minister. The Minister may accept, reject or vary that report on the grounds specified in Section 12.6.13. The final step is for NIRB to amend the Project Certificate to reflect any changes as accepted, rejected or varied by the Minister.

It should be noted that Section 12.8.4 provides that, for greater certainty, Section 12.5.4 applies to reconsideration under Section 12.8.2 or 12.8.3. Section 12.5.4 provides as follows:

“The Minister may propose priorities and reasonable time frames for completion of the reviews.”

In conclusion, it is our submission that the January 10, 2013 letter from Baffinland is an application to reconsider the terms and conditions contained in the Project Certificate, under Section 12.8.2, and that the application meets the requirements for reconsideration as set out in that section.

- *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.*

In general, Baffinland has not identified any specific terms and conditions within Project Certificate No. 005 that would need to be reconsidered or amended to reflect the ERP.

However, it is our submission that the Project Certificate would require amendment to authorize the construction and operation of the components required under the ERP, to the extent that they are incremental to the full Project authorized under the Project Certificate. This would include the transportation of an expected nominal 3.5 Mt/a of iron ore from the Mine Site along the Tote Road to Milne Port, expansion of the existing Milne Port facilities, and marine shipping from Milne Port to market. An amended Project Certificate would authorize these changes and establish appropriate terms and conditions under Section 12.5.6, reflecting the primary

objectives set out in Section 12.2.5 (including environmental mitigation measures, monitoring, etc.).

As we proceed with review of the proposed amendments under the ERP, we may identify specific terms and conditions of the existing Project Certificate which would need to be reconsidered or amended.

- *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.*

In our submission, we expect that public concerns will be fully addressed by the NIRB in the process for reconsideration of the Project Certificate under Section 12.8.2. Baffinland will continue to engage in consultation with communities to provide information to the communities, to identify and understand any public concerns, and to address those concerns in the design and operation of the ERP.

- *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.*

In our submission, the update or addendum to the FEIS required to support the reconsideration of the Project Certificate should follow the “Addendum to the Guidelines for the Preparation of an Environmental Impact Assessment for Baffinland Iron Mines Corporation’s Mary River Project” (NIRB File No. 08MN053) respecting the “Road Haulage Option” alternative. We note that these guidelines were developed in consultation with public and agency comment. Additionally, Baffinland notes that the original DEIS included a detailed assessment of the Road Haulage Option utilizing these guidelines, but Baffinland confirmed on April 15th 2011 that the Road Haulage Option would not be pursued as part of the Project, which would focus solely on the rail option to Steensby Port. Utilizing the existing NIRB addendum guidelines would ensure that an effects assessment would be generated for activities proposed within the ERP as an addendum to the FEIS.

- *Any matter of importance to the Party related to the request to reconsider the terms and conditions of the Project Certificate by the NIRB.*

Baffinland wishes to note that we are proceeding with obtaining full regulatory authorization for the full Mary River Project, including an application for a Type A Water Licence, with a public hearing on that application scheduled before the Nunavut Water Board on April 23-25, 2013. We submit that the process for consideration of the ERP, and amendments under the Project Certificate to enable the ERP to proceed under appropriate terms and conditions, should be seen as incremental to the full Project as authorized, and should focus on the ERP itself, without re-opening issues related to the full Project as reflected under the Project Certificate. We expect to be able to file an addendum relating to the ERP (utilizing the guidelines issued by NIRB in November 2010) in June 2013, and it is our hope that the reconsideration of the Project Certificate to authorize the ERP could be completed in the early part of 2014 to enable the potential decision for ore shipments in the summer of 2014.

We hope that these submissions are helpful and we look forward to receiving and responding to submissions from any of the other parties.

Yours truly,

A handwritten signature in black ink, appearing to read 'Erik Madsen', with a stylized flourish at the end.

Erik Madsen, Vice President
Sustainable Development, Health, Safety & Environment

Cc: Amanda Hanson (NIRB)



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February 5th, 2013

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Sanikiluaq

Ryan Barry
Executive Director
Nunavut Impact Review Board
P.O. Box 1360 Cambridge Bay,
NU X0B 0C0
Phone: (867) 983-4600
Fax: (867) 983-2594

The Qikiqtani Inuit Association (QIA) is submitting these comments in response to a request from Baffinland Iron Mines Corporation's (BIMC) request to amend the Nunavut Impact Review Board's (NIRB) Project Certificate No. 005 for the Mary River Project.

While QIA remains supportive of plans to develop the Mary River Project, the recent project changes were not anticipated by QIA. Following the push to develop a final Project Certificate, QIA had set its sights and corporate plans upon a completion of the regulatory review process and resolution of the on-going negotiations associated with the Inuit Impact and Benefit Agreement and Commercial Production Lease, for an 18 million/ton per annum Baffinland operation. Understanding the complexities of project delivery, including the ability to leverage project funding, QIA is approaching the suggested project changes with a sense of optimism, whereby the potential for development is more promising than before, albeit in a smaller form more aligned with Inuit participation.

Generally stating, QIA does not believe the Proponent has provided enough information to effectively allow parties to respond to NIRB's request for comment dated January 14, 2013. At present, parties have not been afforded details as to what is contained in the amendment the Proponent is intending to file before NIRB.

Beyond these general comments, NIRB has requested responses on the following points:

- *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;*

Specific to the request of the Proponent (January 10th, 2013) QIA can only assume that the request is being filed in conjunction with 12.8.2 (b) of the NLCA. If QIA is to assume that the Proponent intends to file its request in conjunction with 12.8.2 (b), QIA then defers to whether or not the Proponents request has been filed in light of NIRB's Rules and Procedures (September 3, 2009). Here QIA believes that the requirements of Section 7, Motions, should be taken into consideration. QIA further notes that Rule 7.1 and Rule 7.2 provide clear direction on how a motion should be filed before the Board. Based on materials filed to-date by the Proponent, and



NIRB's own request for comments, it appears to QIA that the requirements of NIRB's Rules of Procedures have not been met. QIA requests clarification from NIRB and the Proponent on this topic.

Furthermore, based on QIA's review of the Nunavut Land Claims Agreement (NLCA) and NIRB's Rules and Procedures, there is no clear procedure guiding how NIRB will make determinations related to a request to reconsider a Project Certificate. QIA is left to question how the Project Certificate will be reviewed through a formal public process. Through the latter portions of this submission QIA attempts to clarify matters it feels are appropriate given what is currently known about the suggested changes in the project.

Furthermore, in response to this request from NIRB, it is noted from the January 14, 2013 letter that NIRB believes that “the timelines associated with the reconsideration of the terms and conditions of a NIRB Project Certificate are significantly shorter than for the original review of the associated Project.” It is unclear to QIA on what basis NIRB made this statement.

QIA kindly requests that NIRB provide additional information on how NIRB intends to proceed with this amendment request on shorter timelines including any procedural references. Here QIA would also welcome any additional insight that can be provided as to how the "Coordinated Review Process" may need to adapt to address the proposed Project Certificate Amendment. For instance, will the Nunavut Water Board consider not issuing a final license until NIRB completes a process to consider amendments to the Project Certificate?

- *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;*

Based on the information provided by the Proponent, QIA cannot determine if specific terms and conditions should be reconsidered or amended at this time. Here QIA notes that providing NIRB with a detailed list of terms and conditions that would require reconsideration or amendment should take place at a later date and once parties have been afforded the opportunity to consider the proposed project amendments. At present, QIA can only suggest that due to indications of changes in project transportation, environmental and social implications that a number of terms and conditions will require additional examination.

It is important to note that the Project Certificate was the culmination of the NIRB process which concluded in developing project specific conditions based upon a formal review of the Final Environmental Impact Statement (FEIS). Based upon the Proponent's recent submission to NIRB QIA understands that the information basis upon which project specific conditions are currently based will be modified through the submission of additional information. Taking current circumstances into consideration, QIA is not in a position to comment on the adequacy of the current Project Certificate or the significance of predictions contained in the FEIS for any or perhaps all the valued environmental component or valued socioeconomic components.

P.O. Box 1340, Iqaluit, Nunavut, X0A 0H0 • Phone: (867) 975-8400 • Toll Free 1 800-667-2742 • Fax: (867) 979-3238 • Website: www.qia.ca

Page 2

Pond Inlet

Qikiqtarjuaq


Resolute Bay

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Furthermore, the Mary River Project Committee in Pond Inlet has held several meetings, included as an appendix is a copy of a recent letter from this committee. During Mary River Project Committee meetings, and through public discourse, QIA has been informed that in providing only an English version of their January 10th letter the Proponent has caused public confusion as to what has been filed before NIRB. Again, this serves to reinforce the need to communicate directly with Inuit using appropriate methods. Here QIA notes the Proponent did undertake to visit Pond Inlet and Igloolik to discuss project changes in person. QIA believes current public confusion relates more to the overall lack of details on the nature of project changes and expects that this can be overcome through formal submissions and future community interactions.



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QIA urges NIRB to take past practices into account when developing formal processes for reconsidering the final Project Certificate. The review process associated with the proposed Mary River Project (an 18Mt/a mine) has already included several additional review stages including; past amendments to the DEIS (to remove the “Tote Road Option”), and, the



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Attachment: Letter from Pond Inlet Mary River Project Committee

Mary River Project Committee
Pond Inlet

January 24, 2013

NIRB File No. 08MN053

Ryan Barry
Executive Director
Nunavut Impact Review Board

Re: Baffinland request to amend licence number 005

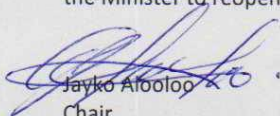
Dear Mr. Barry

Mary River Project Committee had a meeting to discuss of your letter in regard that Baffinland wish to amend project certificate number 005. The amendment stated that Baffinland wanted to do early development phase which will be shipping ore from Milne Inlet in open season.

Mary River Project Committee members find that the terms and conditions will need to be amended and add more conditions for Milne Inlet. There was no study done in or around Milne Inlet for marine mammals in fact Pond Inlet sent and application to Baffinland, Department of Fisheries and Ocean and Health and warfare to conduct to study Narwhales during the shipping season. There is no condition to have monitors should be on ships that will carry ore from Milne Inlet, it may say in Steensby Inlet but not through Milne Inlet.

Condition number 87 states that there will be a monitoring of ballast water at Steensby Inlet but there is no condition made for Milne Inlet. Condition number 99 is only for Steensby Inlet but not for Milne Inlet. Same as for the rest of conditions made for Steensby Inlet.

There was a Draft Environmental Impact Statement (DEIS) to use Milne Inlet as ore dock in summer season but that was removed by Baffinland. As for this reason Mary River Project Committee was not fully made aware what was in DEIS for Milne Inlet. Mary River Project Committee feels that the assessment will need to go through the process, it requires reconsideration. Mary River Project Committee request that NIRB should make application to the Minister to reopen the Project Certificate.



Jayko Alooop
Chair
Mary River Project Committee
Pond Inlet



Nunavut Kayamat

via Email to: info@nirb.ca

RE: Baffinland's Request to Amend Project Certificate No. 005

On January 14, 2014, the Nunavut Impact Review Board (NIRB) invited interested parties to comment on Baffinland Iron Mines Corp's (Baffinland) letter of January 10, 2013 requesting NIRB to amend the Project Certificate No. 005 (Project Certificate), issued on December 28, 2012. Baffinland made the request in order to add an earlier revenue phase prior to full development of the approved Mary River Project. The Government of Nunavut ("GN") has reviewed NIRB's request for comment and has prepared the following comments.

Baffinland previously introduced these activities as an alternative option of developing the Project at the initial technical review of the Draft Environmental Impact Statement (DEIS) for the Mary River Project Proposal. These alternative means were described as “Road Haulage Option”. This Option was removed by Baffinland in 2011.

In its letter to NIRB dated June 30, 2011, Baffinland provided that by removing the Road Haulage Option, which was intended to continue through the life of the Project, as a result made substantive changes to the Draft EIS. The following highlights the changes to the Draft EIS, and ultimately the Final EIS:

- Deletion of any reference to trucking of ore from the Mine site to Milne Inlet;
- Deletion of any reference to an ore stockpile at the Milne Inlet;
- Deletion of any reference to an ore dock at Milne Inlet; and
- Deletion of any reference to vessel traffic for shipping ore from Milne Inlet during the open water season.

Consequently, Baffinland revised its assessments of impact to the Milne Port, Milne Inlet Tote Road, Mine Site and Shipping. It concluded that the changes to its impact

assessments led to reduced interactions with the Valued Ecosystem Components (VEC's) assessed and in some cases, a total elimination of any interaction.

Baffinland's removal of the Road Haulage Option and revised Draft EIS were made following the submissions of Information Requests by parties. As a result, the development activities currently described as an "Early Revenue Phase" was not included in the Final EIS. Therefore they were not reviewed, assessed or considered during the technical reviews of the Final EIS, at the Final Hearing, or at the Regulatory Workshop – all of which culminated in the current terms and conditions of the Project Certificate.

Section 12.8.2 (a) (b) and (c) of the Nunavut Land Claims Agreement (NLCA)

Section 12.8.2(a) (b) and (c) of the NLCA set out three scenarios for when terms and conditions of a project certificate may be reconsidered by NIRB.

In the first scenario, reconsideration is permitted if the terms and conditions of a project certificate are not achieving their purpose. In this case, the Project Certificate was issued on December 28, 2012 and Baffinland's request for amendment was sent to the NIRB on January 10, 2013. Given the short time between the events, it is not possible for the GN to assess whether the terms and conditions of the Project Certificate are not achieving their goals. Moreover, as the majority of the terms and conditions have yet to be implemented, we are unable to assess whether there might be more efficient method of accomplishing the purpose of the terms and conditions.

In the second scenario, NIRB may reconsider the terms and conditions of a project certificate if "*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.*"

Having reviewed Baffinland's request to amend the Project Certificate, the GN can appreciate the potential implications of uncertainty in the current global financial environment on Baffinland's finance given the capital cost of a large development project. However, without further information, we are unable to assess and determine what particular circumstances relating to the Mary River Project or the effect of the terms and conditions of the Project Certificate are *significantly* different from those anticipated at the time the Project Certificate was issued.

Finally, the GN has no information regarding technological developments or new information which might change the method of accomplishing the purpose of the terms and conditions.

Potential implications to the terms and conditions of the Project Certificate

As indicated above, the proposed development activities for a Road Haulage Option currently described as the Early Revenue Phase were removed from the Draft EIS. Consequently, there has been no assessment of impacts of the proposed activities to the Milne Port and the associated ore storage facilities, Milne Inlet Tote Road, the mine

site and shipping. More importantly, the early removal of the development activities resulted in substantive changes to Baffinland's assessment of interactions with VECs and in some cases, a total elimination of any interaction in the Draft EIS, and ultimately the Final EIS. In short, the terms and conditions of the Project Certificate do not directly address the potential impacts associated with Baffinland's request for consideration of development activities associated with an Early Revenue Phase.

Therefore, at this time we are unable to assess which specific terms and conditions of the Project Certificate would need to be considered or amended, nor if additional terms and conditions should be considered to reflect the proposed development activities.

Potential public concern

NIRB's New Release dated January 14, 2013 specifically states: "...*although the Road Haulage Option was included in the Draft EIS, it was subsequently withdrawn from consideration by Baffinland following consideration of the feasibility study for the Project released in January 2011 and amid concerns of creating potential process delays should the alternative become the preferred means of developing the Project.*"

Given the initial public concern mentioned above and without any further public engagement on this matter, the GN is unable at this time to comment on whether reconsidering or not reconsidering the Project Certificate terms and conditions may arouse public concern.

Format of Baffinland's Proposal

To facilitate the review of the development activities proposed under an Early Revenue Phase, it would be appropriate for Baffinland to provide a single document setting out all the relevant information relating to the proposed development activities and the potential ecosystemic and socio-economic impacts of the project. The format of Baffinland's proposal should at a minimum ensure that all project activities are evaluated in a comprehensive manner to address the cumulative effects of the entire project throughout its life cycle.

We look forward on our continued participation in the Mary River Project and to participating in the review of the addendum proposed by Baffinland. If you have any questions or concerns pertaining to our response, please do not hesitate to contact me by phone at 867-975-7830 or by email at asimonfalvy@gov.nu.ca.

Qujannamiik,

[Original Singed By]

Agnes Simonfalvy
Government of Nunavut



Nunavut Regional Office
P.O. Box 100
Iqaluit, NU, X0A 0H0

Your file - Votre référence
08MN053
Our file - Notre référence
5510-5-4

February 4, 2012

Ryan Barry
Executive Director
Nunavut Impact Review Board
PO Box 1360
Cambridge Bay, NU, X0B 0C0
Via electronic mail to: info@nirb.ca

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

Dear Mr. Barry,

Thank you for your letter dated January 14, 2013 inviting Aboriginal Affairs and Northern Development Canada (AANDC) to comment on the proposed amendment to Project Certificate 005 (PC 005). AANDC has reviewed your letter as well as the correspondence submitted to you by Baffinland Iron Mines Corporation (BIMC) on January 10, 2013. The NIRB has asked parties to comment on the proposed amendment to PC 005 and, in particular, to comment on the following five specific points of discussion.

1) Whether the proposed changes, as presented in the request meet the requirements 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 reconsideration;

Under the Nunavut Land Claims Agreement (NLCA), 12.8.2 allows NIRB to reconsider the terms and conditions contained in a NIRB Project Certificate if NIRB is satisfied 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 provides more efficient method of accomplishing the purpose of the terms and conditions.

The Project Certificate issued for the Mary River Project has only very recently been



issued (December 28 2012). As well, the construction and operation of the main components of the proposed mining operation are currently undergoing regulatory review and have yet to begin. Therefore, 12.8.2 (a) and (c) are unlikely to apply to the circumstances surrounding BIMC's proposed changes to the Mary River Project.

BIMC, in their letter dated January 10, 2013, has indicated that the proposed Mary River Project would be difficult to finance "*In the current global financial market...*" and have proposed a phased approach that would allow the development of the project to begin in 2013. Although BIMC has not directly addressed requirements under 12.8.2, it appears that their reported financial considerations are proposed as an argument for circumstances relating to the project having changed.

2) 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;

AANDC has reviewed the terms and conditions associated with PC 005 in light of the Early Revenue Phase amendment proposed by BIMC and has identified some terms and conditions which could be reconsidered or amended in light of the proposed changes. However, AANDC feels that it is premature to provide comment or suggest amendments to specific terms and conditions listed in PC 005 until a thorough ecosystemic and socio-economic assessment of the Early Revenue Option has been conducted that adequately reflects the changes being contemplated by BIMC.

Broadly speaking, terms and conditions that make reference to monitoring plans, adaptive management strategies, baseline studies, model development or working groups may need to be reviewed and possibly amended to ensure that they reflect the proposed changes outlined in the Early Revenue Option. Furthermore, the Early Revenue Option was not fully considered during this assessment and it is therefore possible that additional terms and conditions may be required to mitigate any potential environmental or socio-economic impacts associated with the newly proposed project components and activities.

3) 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 this concern;

In their January 10, 2013 letter, BIMC states that the ore haulage concept being described as the Early Revenue Option was contemplated during the DEIS stage of the projects review and was referred to then as the 'Road Haulage Option'. This option was removed prior to the submission of the FEIS and its removal was discussed and commented on during the NIRB's public information sessions. The NIRB's Public Information Meetings Summary Report (June-July 2011) states the following with regards to Milne Inlet Port (Section 3.1.3):

The Proponent's decision to remove the proposed shipping of iron ore from the



mine site via Milne Inlet from their project proposal was generally welcomed by community members in north Baffin Region. However, similar concerns were expressed about the potential negative impacts of developing the port, and the potential risks to marine environments in the Milne Inlet area from the proposed shipment of supplies

Section 3.1.6 makes reference to concerns surrounding Milne Tote Road.

Concerns raised on the proposed Milne Tote Road were very similar with the concerns raised during the NIRB public scoping meetings in 2009; including, truck-wildlife collisions, dust emissions and air quality, as well as potential barriers to traditional land use activities.

Based on this summary, the re-introduction of the ore haulage concept described as the Early Revenue Option appears likely to arouse public concern. However, in order to accurately gauge public concern to the proposed changes, AANDC recommends community consultation activities be undertaken as part of any project reconsideration process of this magnitude and nature being contemplated by the NIRB.

4) 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;

AANDC suggest that the NIRB consider requiring BIMC to submit its proposed changes to the FEIS in a similar format as used in the addendum to the DEIS that was submitted in June, 2011. A description of the format used in the addendum is provided in the BIMC's transmittal letter sent to the NIRB on 30 June 2011.

5) Any matter of importance to the party related to the request to reconsider the terms and conditions of the Project Certificate by the NIRB.

In view of the potential impacts and public concern resulting from this proposed change to the project, at least in the near term, it is important that any new or updated impact assessments and predictions are the subject of appropriate scrutiny and public engagement. AANDC suggests NIRB may want to consider including steps such as the following in their 12.8.2 reconsideration process, should it proceed:

- Proponent submission of a detailed description of the newly proposed project as well as a detailed description of how this project differs from the approved project;
- Community consultation on the proposed changes to the project;
- Proponent submission of environmental impact assessment (EIS) document
- Information request stage in relation to the EIS document;
- Technical meeting (if required);
- Public hearing



The proposed changes being contemplated by BIMC involve the inclusion of new project components and activities as well as the delay and possibly suspension or removal of components and activities in the current design. In order to facilitate an assessment of the proposed changes to BIMC's project design, and ultimately an amendment of PC 005, we suggest that BIMC be required to clearly identify the following:

- which components of the approved project design are delayed (and for how long);
- which components of the approved project design are, or might be, scaled back, removed or otherwise changed, (and how); and
- the corresponding effect on all FEIS predictions and evidence presented in the course of the Review.

Of course, any assessment process that is used to support an amendment to PC 005 must be designed so that the environmental and socio-economic impacts of the proposed changes to the Mary River Project are adequately assessed and reflect the requirements and intent of the NLCA. Not only do the impacts of the Early Revenue Option need to be assessed in their own right, the proposed changes need to be assessed in light of the entire complement of components and activities being proposed for the Mary River Project to ensure that all matters that should be taken into account by NIRB (NLCA s. 12.5.5) are fully considered. Ultimately the existing and future well being of residents of Nunavut, as well as the ecosystemic integrity of the Nunavut Settlement Area needs to be retained.

AANDC very much appreciates the opportunity to comment on the proposed amendment to PC 005. Should you have any questions, please do not hesitate to contact James Neary at 867-975-4567 or by email at james.neary@aandc-aadnc.gc.ca.

Sincerely,

[Original signed by]

Karen Costello
Director, Resource Management



Canadian Arctic Resources Committee

MAILING ADDRESS: Box 371, Station A, Ottawa, Ontario, Canada, K1N 8V4

OTTAWA OFFICE: 488 Gladstone Avenue TEL: 613.759.4284 FAX: 613.237.3845

February 5, 2013

Ms. Elizabeth Copeland
Chairperson - Nunavut Impact Review Board
PO Box 1360, 29 Mitik
Cambridge Bay, NU X0B 0C0
Via electronic mail to: info@nirb.ca

NIRB 08MN053: NIRB Acknowledgement of Baffinland's Request to Amend Project Certificate No. 005 for the Mary River Project

After reviewing the information provided by the NIRB and a review of the relevant sections of the NLCA it is recommended that the Project Certificate terms and conditions be reconsidered for the following reasons:

1. As Baffinland stated the "Early Revenue Phase" was deferred and not considered in the FEIS;
2. Section 12.8.2 (a) and (b) would "trigger" a re-consideration;
3. Public concern would be aroused as the Milne Inlet Tote Road would according to the FEIS Volume 6 Appendix 6F TERRESTRIAL WILDLIFE BASELINE SUPPORT Figure 11 run through a Caribou calving area; and
4. The update or amendment to the FEIS could consider an alternate route to mitigate the Caribou calving concern and the completion of studies to assess the vulnerability of Caribou to the amendment proposed by Baffinland.

Thank you for the opportunity to comment on the above project.

David Gladders – Executive Director

Cc: Canadian Arctic Resources Committee





Fisheries and Oceans
Canada

Pêches et Océans
Canada

Canadian
Coast Guard

Garde côtière
canadienne

Commissioner

Commissaire

FEB 04 2013

Mr. Ryan Barry
Executive Director
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay
Nunavut
X0B 0C0

Dear Mr. Barry:

I am writing in response to your letter dated January 14, 2013 soliciting comments with respect to Baffinland Iron Mines Corporation's request for a reconsideration of the terms and conditions in Project Certificate 005 concerning the Mary River Project.

Although the Canadian Coast Guard is not a licensing agency, it was a participant at the hearings conducted by the Board (summer, 2012) and the Project Certificate Workshop (December 18-19, 2012) and is implicated by one of the 184 terms and conditions identified in the Board's Final Report. I would like to take this opportunity to comment on term and condition #174 which addresses marine spill response.

The Canadian Coast Guard is the lead federal agency for ensuring appropriate response to all ship-source and mystery-source spills in Canadian waters, including the Arctic, and maintains a national response capacity to respond to spills where there is not a clearly identified polluter, and/or where the polluter has not taken responsibility.

Where the polluter has been identified and is willing and able to respond, the Coast Guard will advise the polluter of its responsibilities under the *Canada Shipping Act* and, once satisfied with the polluter's intentions / plans, monitor the polluter's response and provide advice and guidance as required under the posture of the Federal Monitoring Officer.

.../2

Canada's Marine Pollution Preparedness and Response Regime in the north differs from the regime established in the south. In waters south of 60°, the Regime requires ships of a certain size to have an arrangement with a Transport Canada certified Response Organization to clean up an oil spill. In waters north of 60°, however, there is no requirement for vessels or oil handling facilities to have these arrangements. As such, it is first and foremost the responsibility of the polluter to respond, with industry and the Canadian Coast Guard as the primary response capacity to pollution incidents in Arctic waters.

The Canadian Coast Guard understands that the Proponent (Baffinland) is responsible for preparedness and providing environmental response in a self-sufficient manner, as per term and condition #92 and through commitments made during the hearing process. This is consistent with the Coast Guard's view that the creation of a response capacity within the context of the Mary River Project route, risk and liability is the sole responsibility of the Proponent. Additionally, term and condition #174 states:

"The Proponent and the Canadian Coast Guard are required to provide spill response equipment and annual training to Nunavut communities along the shipping route to potentially improve response times in the event of a spill."

Coast Guard had hoped to obtain clarity for the discrepancy between per terms and conditions #92 and #174 during the Project Certificate Workshop, specifically with regard to expectations for Coast Guard vis-à-vis #174, but the tight schedule did not cooperate. Given the Board's request for comments on a set of criteria outlined in the January 14, 2013 letter, Coast Guard has chosen to comment in the context of the fifth criteria:

Any matter of importance to the Party related to the request to reconsider the terms and conditions of the Project Certificate by the NIRB

Coast Guard, under term and condition #174 is prepared to provide advice on training, if requested by the Proponent, to assist the Proponent with its plan to train and equip Nunavut communities. If this term is to be reconsidered by the Board, however, further operational clarification would be welcomed during the preparatory phase of this project.

In an effort to strengthen Canada's environmental response capacity in the Arctic, in 2007, the Government of Canada's Health of the Oceans Initiative provided CCG with funding for 19 Arctic Community Packs to address spills associated with the annual fuel resupply of Arctic communities. Arctic Community Packs could supplement the Proponent's response but it should be noted that they are suitable for the provision of initial response to small scale incidents.

The decision by Baffinland to scale back its project, at least initially, raises the question whether this will impact its ability or inclination to be the primary responder for ship-sourced spills and to ensure the necessary level of preparedness for additional communities along Eclipse Sound and Eastern Baffin Island. Confirmation of these intentions would be welcome.

As Canada's north opens its doors to further development, and large projects such as Mary River prove viable, marine transportation will increasingly be relied on as the transportation mode of choice for moving equipment and product. Coast Guard is excited about Nunavut's future prospects and expects to continue serving communities in its usual capacities including northern re-supply, ice breaking, search and rescue and environmental response capacity. As the Mary River Project unfolds and working groups such as the Marine Environment Working Group become established, Coast Guard welcomes the opportunity to lend its expertise in an advisory capacity when called upon.

Please accept my congratulations on the thorough and successful completion of the Board's hearing and report stages and best wishes for continued successful leadership on this file.

Yours sincerely,


Marc Grégoire

Office
des transports
du Canada



Canadian
Transportation
Agency

February 5, 2013

NIRB File: 08MN053

Amanda Hanson
Director of Technical Services
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay
NU, X0B 0C0

**Re: Comments Regarding Baffinland's Request to Amend Project Certificate N0. 005 –
Mary River Project**

Dear Ms. Hanson,

The following is in response to NIRB's invitation to parties to comment on Baffinland's request for a reconsideration of the terms and conditions of the Mary River Project Certificate.

The proposed changes to the Mary River Project would not alter the environmental impacts of the railway component that were assessed and reviewed.

Consequently, Agency staff does not foresee the need to reconsider the terms and conditions NIRB set in the project certificate regarding the railway or offer comment on the other issues in your January 14, 2013 letter to Baffinland.

We thank NIRB for the opportunity to comment regarding the reconsideration of the Mary River Project Certificate.

Sincerely,

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February 4, 2013

Our file: 4703 003 018
NIRB File: 08MN053

Ryan Barry
Executive Director,
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay,
NU, X0B 0C0

Via email: info@nirb.ca

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

In response to the questions posed to Parties by the Nunavut Impact Review Board (NIRB) regarding Baffinland's request to amend Project Certificate No. 005, Environment Canada provides the information below for NIRB's consideration.

While it is ultimately the NIRB's decision, EC is of the opinion that the activities proposed under the Early Revenue Phase (ERP) were not presented in the Final Environmental Impact Statement (FEIS) and therefore are not yet fully addressed by the existing conditions in Project Certificate No. 005. EC therefore feels that reconsideration of the current Project Certificate is warranted under the Nunavut Land Claim Agreement (NLCA) 12.8.2(b) which reads "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".

Given that the ERP has not yet been assessed, EC is unable to provide a definitive list of terms and conditions that may require modification; however, a preliminary review of the information suggests that the terms and conditions listed below should be reconsidered to ensure that they address the activities outlined under the ERP proposal. In particular, it will be important that the conditions effectively cover trucking of ore on the Tote road, stockpiling of ore at Milne Inlet and shipping through Milne Inlet. Further, EC notes that new conditions may be required to address new issues arising from a detailed review of the information related to the Early Revenue Phase.

In an effort to assist the NIRB in their deliberations EC has provided, an initial list of terms and conditions from Project Certificate No. 005 which may require reconsideration or amendment:

#7 – Air Quality Monitoring – The current condition focuses on emissions monitoring through Foxe Basin and along the Hudson Strait. EC suggests that condition #7 be amended to ensure that emissions from activities along the northern shipping route are included.

#8 - Air Quality – GHG emissions – the current condition focuses on Steensby Inlet, EC suggests that condition #8 be amended to include the Milne Inlet port site.

- #9 – Air Quality – GHG emissions** – the current condition specifically references Steensby Port for inclusion in GHG calculations. Given that the proposed changes to project activities include substantially more activity at the Milne site, EC suggests that it will be important to add specific reference to Milne Inlet port site to condition #9 as well.
- #10 – Air Quality - Dust Management and Monitoring Plan** - given that the activities described in the amendment request include a substantial amount of trucking on the tote road, EC suggests that it will be important to ensure that dust generated from ore trucking on the Tote road is included in condition #10.
- #83 – Marine Environment – Shoreline Effects and Sediment Redistribution** – the existing condition specifies that tide gauges should be installed at the Steensby Inlet Port site. Given that the proposed changes to project activities include substantially more activity at Milne Inlet, EC suggests that the condition require that tide gauges be installed at the Milne Inlet Port site as well.
- #86 – Marine Environment -Ballast water** - the existing condition focuses on Steensby Inlet. EC suggests that Condition #86 should also reference Milne Inlet.
- #97 – Marine Environment – Spill Prevention** – the existing condition focuses on the southern shipping route. In order to ensure that we understand what resources are at risk from spills along all shipping routes, EC suggests that Baffinland model spill dispersion along the northern shipping route as well.
- #99 – Marine Environment – Supplemental Baseline Assessments** – the existing condition largely focuses on assessments in Steensby Inlet. Given that the ERP will result in a great deal more activity in Milne Inlet and along the northern shipping route, it will be important to broaden the condition such that assessments in Milne Inlet and along the northern route are sufficient to ensure that impacts from shipping can be detected.
- #176 – Accidents and Malfunctions – Revised spill modeling** - The existing condition focuses on the southern shipping route and should be broadened to include revised spill trajectory modeling for Eclipse Sound and Davis Strait (east coast of Baffin Island).

The above list does not include conditions that are project-wide and could therefore be interpreted as including activities under the ERP. EC expects that broadly worded conditions applicable to the project as a whole will apply equally to the new activities proposed under this amendment request.

Ultimately the format of the update/addendum document will be determined by NIRB; however, EC suggests that the document be in a stand-alone format to facilitate efficient and timely review. EC would also like to take this opportunity to emphasize that the update/addendum should not only include a listing of applicable conditions and commitments from the Project Certificate but also a listing of general conditions/commitments made during the review of the Mary River Project as a whole that will be carried over into the planning and assessment of the ERP.

In considering the impacts of the proposed shipping through Milne Inlet, it will be important that the proponent provide sufficient information for reviewers to understand any potential impacts beyond what was considered in the FEIS. For EC it will be of particular importance to clearly understand the impacts to the marine environment. This includes, but is not limited to, impacts

of shipping disturbance and accidental spills on migratory birds, the type and size of the ships to be used, as well as the number of transits that would be required to ship the proposed 3.5 million tonnes of ore. Further EC looks forward to receiving more information regarding the Northern shipping route through Baffin Bay along the eastern coast of Baffin Island.

EC thanks the NIRB for the opportunity to participate in this review and to provide input related to the reconsideration of Project Certificate No. 005. We hope the information provided above is useful to the NIRB and we look forward to participating in the review of the ERP addendum, should the NIRB deem it necessary.

Should you have any questions regarding the foregoing please contact Mark Dahl at (204) 983 4815 or via email at mark.dahl@ec.gc.ca.

Sincerely,



Cheryl Baraniecki
Regional Director
Environmental Protection Operations
Prairie and Northern Region
Environment Canada

cc: M. Duggar, Northern Project Management Office
S. Forbrich, Manager, EAMP, Environment Canada
C. Ogilvie, Head EA-North, Environment Canada
T. Simmons, Northern Project Management Office



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Your file Votre référence
08MN053

Our file Notre référence
NU-07-0050

February 5, 2013

Amanda Hanson
Director of Technical Services
Nunavut Impact Review Board
PO Box 1360
Cambridge Bay, NU X0B 0C0

Dear Ms. Hanson:

Subject: DFO Comments on the Request to Amend the Mary River Project Certificate No. 005

Fisheries and Oceans Canada (DFO) received a letter from the Nunavut Impact Review Board (NIRB) on January 14, 2013 inviting comments from parties with jurisdiction and members of the public on Baffinland Iron Mine's request for a reconsideration of the terms and conditions in Project Certificate 005.

Baffinland proposes, in their letter to the Nunavut Impact Review Board on January 13, 2013, 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.

The Board has requested comments on the following items, which DFO has considered and provides the following response:

- 1. 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;*

DFO is of the view that although a similar Road Haulage option was proposed in the draft Environmental Impact Statement, it was subsequently removed from further consideration following the submission of information requests by various intervenors. As a result, DFO and other interested parties have not had the opportunity to provide a final assessment of the potential impacts of this option or the Early Revenue Phase during the environmental assessment review of the project. Therefore, DFO is of the

opinion that the proposed changes would trigger a reconsideration of the terms and conditions for Project Certificate 005 pursuant to section 12.8.2 (b) of the NLCA.

2. *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;*

DFO has completed a preliminary review of the terms and conditions associated with Project Certificate 005 and is of the opinion that there would be several terms and conditions that would need to be modified to accommodate the Early Revenue Phase. From DFO's perspective, many of the terms and conditions related to the marine environment and marine mammals would need to be reconsidered, particularly from the perspective of their geographic application and adequacy. DFO would also suggest that upon completion of the review of the Early Revenue Phase, there may also be the need for additional terms and conditions to fully address this option.

3. *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;*

DFO is of the opinion that there may be potential impacts on marine valued ecosystem components from open water shipping of ore through Milne Inlet and this is likely to arouse significant public concern, as it may impact marine mammal harvesting activities by local residents.

4. *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,*

The potential format of the update or addendum to the existing Final Environmental Impact Statement should focus on the Early Revenue Phase, but should also include a consideration for any potential changes to the remaining project and its various phases, and whether the previously assessed impacts remain valid. Further, the update or addendum should build on the discussions and agreements reached during the review of the original project and be incorporated into the update or addendum.

5. *Any matter of importance to the Party related to the request to reconsider the terms and conditions of the Project Certificate by the NIRB.*

DFO does not have any comments to provide on any other matter of importance related to the request.

If you have any questions concerning the above or would like to discuss in greater detail please contact Derrick Moggy directly by telephone at (705) 522-9909 by email at derrick.moggy@dfo-mpo.gc.ca.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Moggy'.

Derrick Moggy
Habitat Team Leader
Fisheries and Oceans Canada

cc. Julie Dahl, Fisheries and Oceans Canada
Larry Dow, Fisheries and Oceans Canada
Georgina Williston, Fisheries and Oceans Canada
Dale Nicholson, Fisheries and Oceans Canada



Natural Resources
Canada

Ressources naturelles
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February 5, 2013

Ryan Barry
Executive Director
Nunavut Impact Review Board
PO Box 1360
Cambridge Bay, NU X0B 0C0

Via email: info@nirb.ca

RE: NIRB's request for comments on Baffinland Iron Mines Corporation (BIMC) Request to Amend Project Certificate No.005 – Mary River Project

Natural Resources Canada (NRCan) is in receipt of your letter to BIMC on potential changes to the Mary River Project dated January 14, 2013. Thank you for the opportunity to provide comments on BIMC Request to Amend the Project Certificate No. 005 – Mary River Project.

NRCan is of the view that the proposed changes, as presented in BIMC's request, meet the requirement for reconsideration as set out in the NLCA, Section 12.8.2 (b). BIMC's "Early Revenue Option" constitutes a project change that would cause the effects of the terms and conditions to be significantly different from those anticipated at the time Project Certificate 005 was issued.

NRCan has reviewed the Terms and Conditions of the Project Certificate 005 against the proposed changes to the project, which were outlined in BIMC's correspondence to NIRB dated January 10, 2013. NRCan has identified terms and conditions related to areas of departmental expertise in permafrost, geotechnical and coastal geomorphology that may need to be reconsidered or amended to reflect the "Early Revenue Option" (refer to attached table).

It is not expected that reconsideration of these particular terms and conditions is likely to arouse significant public concern, although we would note that NRCan responded to a question related to ship wake effects at Steensby Port at the Final Hearings. There is potential for similar questions to be raised in relation to ship wake effects that may occur at Milne Port under the "Early Revenue Option".

NRCan does not have comments 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.

Sincerely,

Original Signed by

John Clarke
Director, Environmental Assessment
Natural Resources Canada

cc: Rob Johnstone, MMS-NRCan
Matthew Spence, NPMO

Initial Analysis of Terms and Conditions for Reconsideration

Ref#	Term & Condition	Related BIMC Commitments	Rationale for Reconsideration
Coastal Geomorphology expertise			
1	The Proponent shall use GPS monitoring or a similar means of monitoring at both port sites and will also use tide gauges at the Steensby Port site to monitor the relative sea levels and storm surges at these sites.	134 - Installation of tide gauges at Steensby Port site to monitor relative sea level and storm surges 136 - Installation of continuous GPS or similar means at Port sites to monitor vertical motion and constrain uplift estimates;	Given the proposed changes to the project reconsideration should be given as to whether this condition should also be applied to Milne Port.
83	The Proponent shall install tidal gauges at the Steensby Inlet Port site to monitor relative sea level and storm surges.	134 - Installation of tide gauges at Steensby Port site to monitor relative sea level and storm surges	Given the proposed changes to the project reconsideration should be given as to whether this condition should also be applied to Milne Port.
81	The Proponent shall reassess the potential for ship wake impacts to cause coastal change following any further changes to the proposed shipping routes.		The "Early Revenue Option" would include additional shipping routes. This term and condition may not need to be reconsidered, but may have relevance to the discussion of other terms and conditions.
84	The Proponent shall update its sediment redistribution modeling once ship design has been completed and sampling should be undertaken to validate the model and to inform sampling sites and the monitoring plan.	354 - "Baffinland will address potential mitigation measures for nourishment of the shoreline fronting the airstrip at Milne Port in the FEIS." 355 - "NRCan suggest Baffinland further clarify in the FEIS how long sedimentation and erosion at Milne Inlet will be interrupted/changed due to existence of a causeway." 356 - "Baffinland will provide in the FEIS a first order evaluation of the hydrodynamics and sediment transport at Milne Port. In addition in the first order evaluation indicates that considerable changes in erosion	During the initial technical review of the Mary River Project, BIMC included commitments related to Milne Port. These should be reconsidered in light of the project changes.

Ref#	Term & Condition	Related BIMC Commitments	Rationale for Reconsideration
		and sedimentation would result from the Milne Inlet dock and causeway infrastructure, Baffinland will provide further information and Baffinland will consult NRCan technical experts as required."	
Permafrost expertise			
25	The Proponent shall undertake the additional geotechnical investigations to identify sensitive landforms, modify engineering design for Project infrastructure and develop mitigation and monitoring measures to minimize the impacts of the Project's activities and infrastructure on sensitive landforms.	108 - As part of detailed design, thermal modeling will be conducted to determine whether the proposed berm design would maintain a permafrost barrier and prevent shallow subsurface seepage to the surrounding environment. 125 - In the detailed design stage, carry out a geotechnical investigation in areas where there are potential instabilities, and incorporate the results in the detailed design phase.	Given the proposed changes to the project reconsideration should be given as to whether this condition should also be applied to Milne Port and Tote Road.
Geotechnical Expertise			
26	The Proponent shall develop and implement a comprehensive erosion management plan to prevent or minimize the effects of destabilization and erosion that may occur due to the Project's construction and operation.	355 - "NRCan suggest Baffinland further clarify in the FEIS how long sedimentation and erosion at Milne Inlet will be interrupted/changed due to existence of a causeway."	Given the previous commitment and proposed changes to the project, reconsideration should be given as to whether this condition should also be applied to Milne Port.

Ref#	Term & Condition	Related BIMC Commitments	Rationale for Reconsideration
28	The Proponent shall monitor the effects of the Project on the permafrost along the railway and all other Project affected areas and must implement effective preventative measures to ensure that the integrity of the permafrost is maintained.	125 - In the detailed design stage, carry out a geotechnical investigation in areas where there are potential instabilities, and incorporate the results in the detailed design phase.	Given the proposed changes to the project reconsideration should be given as to whether this condition should also be applied to Milne Port and Tote Road.



Nunavut Field Unit
Parks Canada
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February 1, 2013

Nunavut Impact Review Board
Box 1360
Cambridge Bay, Nunavut X0B 0C0

Via email: info @nirb.ca

Re: The Nunavut Impact Review Board's (NIRB) invitation for comments regarding Baffinland Iron Mines Corporation's (Baffinland) request to amend Project Certificate No. 005 for the Mary River Project (NIRB File No.08MN053)

To Whom It May Concern:

Parks Canada has had the opportunity to review your January 14th 2013 letter acknowledging the request from Baffinland to amend Project Certificate No.005 in which the NIRB requested comments on the following specific points:

1. 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;
2. 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;
3. 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;
4. 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,
5. Any matter of importance to the Party related to the request to reconsider the terms and conditions of the Project Certificate by the NIRB.

Following a review of the proposed changes to the Mary River project, Parks Canada believes that the amendment to the Project Certificate being requested by Baffinland meets the requirement for reconsideration as set out in the Nunavut Land Claim Agreement (NLCA). Specifically, Section 12.8.2 (b) of the NLCA "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” would trigger a reconsideration.

Parks Canada has a broad mandate for ecological integrity, cultural resource management and traditional use, and visitor experience for Sirmilik National Park (NP). Parks Canada also has interests in the context of the proposed national marine conservation area (NMCA) in Lancaster Sound and adjacent waterways, including Eclipse Sound and Pond Inlet. The proposed changes to the Mary River project introduce new potential impacts specifically related to the proposed NMCA in Lancaster Sound and Sirmilik NP. Parks Canada has identified a number of terms and conditions that may need to be reconsidered for completeness and possibly amended to accommodate the nature, volume, timing and duration of the proposed, considerably expanded shipping activities to and from Milne Inlet. These terms and conditions include No.8, 9, 74, 77, 78, 80, 81, 83, 85 to 91, 93 to 101, 103, 105, 107-115. Please note that this list is not comprehensive as the information pertaining to changes in the project are not detailed enough to enable a complete review. In addition to the reconsideration of these terms and conditions, there may also be a requirement to add new terms and conditions to the Project Certificate in order to ensure that all potential impacts are mitigated.

Based on the history of the project to date, specifically prior public concern about shipping ore via Milne Inlet, it is assumed there will be public interest in a reconsideration of the Project Certificate. Parks Canada would support the NIRB providing opportunities for the public to comment.

Parks Canada recommends that any update or addendum to the existing Final Environmental Impact Statement be submitted as a standalone document, not referencing the original FEIS and containing all information required for the review of the project amendment. The addendum should also indicate which terms and conditions the proponent will be applying specifically to the amended portion of the project.

We appreciate the opportunity to provide the NIRB with our comments and we look forward to continuing to support the NIRB and working with the proponent as the Mary River mine project continues. Please feel free to contact Allison Stoddart at 819-934-2807 or Allison.stoddart@pc.gc.ca if you should have any questions.

Sincerely,



Nancy Anilniliak
Field Unit Superintendent

Cc
Don Marrin, Parks Canada
Mike Wong, Parks Canada
Matthew Spence, Northern Projects Management Office



Transport Canada Transports Canada

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3rd Floor, 344 Edmonton Street
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Your file Votre référence
08MN053

Our file Notre référence
7075-70-1-73

February 4, 2013

Amanda Hanson
Director, Technical Services
Nunavut Impact Review Board (NIRB)
P.O. Box 1360
Cambridge Bay, NU, X0B 0C0

Re: Comments on Baffinland Iron Mines Corporation (Baffinland) Request to Amend NIRB Project Certificate No. 005 for the Mary River Project

Dear Ms. Hanson,

Transport Canada received correspondence from the Nunavut Impact Review Board (NIRB) on January 14th, 2013 which posed several questions on the request submitted by Baffinland Iron Mines Corporation (Baffinland) to amend Project Certificate No. 005 for the Mary River Project. After review of these questions, Transport Canada offers the following comments with respect to the proposed Project Certificate amendment and our regulatory mandate.

Question # 1

Do 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?

The proponent's request meets the requirement for reconsideration as set out under the NLCA, Section 12.8.2(b) as certain project components and activities proposed under the Early Revenue Phase amendment have not been assessed in Project Certificate No. 005. Transport Canada is of the opinion that certain circumstances relating to the project are significantly different from when the Project Certificate was issued. This would include, but not be limited to, the following Transport Canada's interests in the construction, operation and security of port facilities at Milne Inlet, and proposed works in navigable waters.

Question # 2

Have parties 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?

Transport Canada Marine Safety and Security (TCMSS) have reviewed the Terms and Conditions associated with the project and recommends that the following should be amended to reflect Milne Port Operations.

Canada 

- Term and Condition No. 95 identifies Responsible Parties as the Proponent and Transport Canada and is in relevance to over-wintering of a fuel vessel. There is no mention of over-wintering associated with Milne Port in the submitted documents. Transport Canada recommends that this condition be removed or amended to reflect Milne Port should the Proponent plan to over-winter a vessel at Milne Port.

Question # 3

Is a reconsideration of the Project Certificate terms and conditions likely to arouse significant public concern, and if so, a description of the basis for the concern?

Yes, the additional number of ship transits into and out of Milne Port may arouse public concern.

Question # 4

Do 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?

Transport Canada is of the opinion that a separate addendum to the Final Environmental Impact Statement (FEIS), outlining all construction, operation and decommissioning components of the Early Revenue Phase, as well as a list of applicable Terms and Conditions would assist with our respective reviews.

Question # 5

Any matter of importance to the Party related to the request to reconsider the terms and conditions of the Project Certificate by the NIRB.

Transport Canada would be interested in knowing the type and size of vessels, their port of origin and the number of expected transits through Milne Inlet.

Transport Canada would like to thank the NIRB for this opportunity to provide comments on a reconsideration of Project Certificate No. 005 and we look forward to NIRB's decision on Baffinland's Early Revenue Phase proposal.

Should you have any questions regarding Transport Canada's comments concerning this project, please contact John Cowan via email at john.cowan@tc.gc.ca or by telephone at (204) 983-1139.

Regards,



Harvey Nikkel

Regional Director, Prairie and Northern Region

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Hamlet of Pond Inlet
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Mary River project received project certificate no. 005. And the certificate approval indicates. The road haulage of iron ore from the mine site to Steensby and they will be loading iron ore and to start shipping from Milne Port. And also build a Railroad from Mary River to Steensby. This is how we understood their approval during the NIRB hearing in Pond Inlet, Igloolik and Iqaluit.

And the amendment stated that. They would load and ship iron ore from Mary River to Milne Inlet through the road. And the road going through Mary River to Milne Inlet would be re constructed. They would start shipping iron ore from Milne Inlet and cross through Pond Inlet and Baffin Bay. And cross through Eclipse Sound and Baffin Bay. They will be using the area all summer shipping iron ore.

Therefore we have a concern with the Mary River project amendment. Through Pond Inlet Sea and Shipping of iron ore from Mary River to Milne Inlet had been removed. They will be shipping of iron ore from Mary River to Milne Port.

We vision that the amendment for Mary River project is new. It has never been monitored. The ships that will cross through and shipping to Milne Inlet stock piling are not included on the amendment. To prevented us from danger. The amendments were never monitored and it will need to be monitored and as the plan of the project is not amended. We are requesting a NIRB public hearing meeting. As residents of Pond Inlet have concerns with the amendments. Reason if the ships are going to start crossing through is going affected our environment also will affect us Inuit and all residents of the North Baffin.

We are asking for NIRB to hold more Public hearing meeting. The amendments are very important to us. Please do not move foward without consulting with us, and keep us inform.

Sincerely,

Joshua Arreak Deputy Mayor of Pond Inlet



Municipality Of Igloolik

P.O. Box 30, Igloolik, NU XOA OLO Ph: 867-934-8830 Fax: 867-934-8757

February 5, 2013

Ryan Barry
Executive Director
Nunavut Impact Review Board

Comments on Request to Amend Project Certificate No. 005

Further to your correspondence on January 14 this year, please find our comments on whether the proposed changes, as presented in the request by Baffinland Iron Mines Corporation (BIMC) dated January 10, 2013, warrant reconsideration of the existing Project Certificate.

Overall, we feel the proposed changes do meet the requirement for reconsideration as set out in the NLCA, Section 12.8.2 (a), (b), or (c). As the NIRB has acknowledged in its letter, this development option was not included in the Final Environmental Impact Statement (FEIS); it was not considered by the NIRB during the Final Hearing in respect of the Project Proposal; and, therefore, "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."

The fact that a number of important aspects and potential impacts of the Early Revenue Phase were not included in the final EIS, nor were part of the public presentations and discussions at the Final Hearings, including in Igloolik and Pond Inlet, suggests that a formal reconsideration by the NIRB is necessary to meet the objectives of the NLCA and the standards established by the NIRB in the review process to date.

A number of potential impacts related to the "Early Revenue Phase" have not been adequately and specifically considered by Baffinland's experts and consultants; the DIOs; the responsible government departments and agencies; the intervenors; and the community members that have participated in the NIRB review process. This represents a potentially significant gap in the consultation with and protection of Inuit. More concretely, on the ground, there are a certain number of issues that were not discussed in a meaningful manner in Igloolik prior to the issuance of the Project Certificate.

We acknowledge the efforts of Baffinland's President and senior team members to come to the communities and explain the proposed project changes in a timely manner following the decision

of the Board(s) of Directors of Baffinland's parent companies. It appears that there could be some potential positive benefits for Inuit and the communities associated with the "Early Revenue Phase." A formal reconsideration by the NIRB (based on the proposed addendum to the FEIS) would permit those potential positive benefits to be more fully described and for any formal commitments undertaken by Baffinland to be incorporated into the Project Certificate.

The "Early Revenue Phase" raises general issues related to a shift in potential project impacts between the communities affected by the Mary River Project. Notably, the change of the port to Milne Inlet from Steensby Inlet completely changes the risks and potential impacts for the communities who are now on the proposed shipping route. In particular, it would be important for there to be consultations with Pond Inlet and any other communities about ecosystemic and socio-economic impacts that might not have been foreseen or discussed as part of the NIRB's review process.

Equally, it would be important for there to be consultations with Igloolik to provide further information about the implications of the "Early Revenue Phase" on Baffinland's timelines and plans for year-round shipping to Steensby Inlet. Given previous community concerns, the delay in construction of the railway and Steensby port may provide a positive opportunity for further baseline studies and design of effective monitoring and mitigation measures—particularly related to ecosystemic impacts related to the railway and shipping route through Foxe Basin.

We can understand that there is a need for flexibility to deal with changes to project circumstances such as the "Early Revenue Phase"; however, there is also a need to ensure that the comprehensive review process undertaken by the NIRB—with the collaboration of many parties and the opportunities for consultation with communities and the public—remains the cornerstone for building shared understanding, expectations and acceptance of all significant changes to the Mary River Project. As some of the recent developments related to the Mary River Project have illustrated to the communities, the best plans, intentions and commitments can be trumped by economic realities and global commodity prices. It is therefore important, at this early stage in the process to set a good precedent for the reconsideration of the Project Certificate, to uphold the technical rigour of and public confidence in the impact assessment and consultation process in anticipation of future changes at different project phases.

While being careful not to suggest any relationship between the two announcements, it should be noted that the request for amendment to the Project Certificate follows soon upon the announcement of the change in the ownership structure between Baffinland's parent companies: from a 70/30 split between ArcelorMittal and Iron Ore Holdings to a 50/50 joint venture. It would be useful, consequently, to address in any revisions or amendments to the FEIS and Project Certificate, especially in terms of clarifying the corporate governance structures and application of the policies and procedures of the parent companies at the project level.

Concerning whether a reconsideration of the Project Certificate terms and conditions is likely to arouse significant public concern, we feel not reconsidering the Project Certificate would more likely arouse public concern about potential gaps in the impact assessment and consultation process, as discussed above.

At the same time, it is also important that reconsideration of the Project Certificate not cause undue delays to the project, which could further delay some of the anticipated benefits such as employment and business opportunities. Therefore, the public would likely understand and support an accelerated and focused reconsideration process.

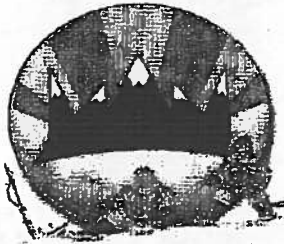
Regarding the potential format of the update or addendum to the existing Final Environmental Impact Statement required to support the reconsideration of the Project Certificate, we suggest it would be important to include detailed information about new employment and business opportunities for Inuit; implications for training and work preparedness plans; and, implications for monitoring and mitigation plans.

In terms of the format, it would be important to ensure that the information contained in the addendum to the FEIS be communicated effectively to Inuit, including through translation, media and local meetings. This is an opportunity to strengthen on-going communication and consultation mechanisms with the communities.

According to our understanding, the Early Revenue Phase represents a significant change in the project previously reviewed by the NIRB, while the second phase of constructing the railway and port at Steensby Inlet remain part of the long term goals and objectives of the project. For this reason, our final recommendation at this time is that the conditions of the Project Certificate No. 005 as previously identified by the NIRB concerning conducting marine baseline studies and the establishment of an effective marine monitoring program remain vital, so they are properly implemented and carried out to the satisfaction of all parties involved. In this regard, we suggest the most successful approach is to involve the communities in the early stages of planning, and to ensure they participate in a meaningful way through the process so the necessary information is available prior to initiating the second phase of the project.

Should you have questions, or require additional information on our comments, please do not hesitate to contact myself, or the Senior Administrative Officer, Brian Fleming, at our office. We look forward to the NIRB response, and are thankful for the opportunity to comment on this important matter.

Joseph Inooya
Mayor of Igloodik



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Qikiqtani Inuit Association

PROTECT & PROMOTE INUIT RIGHTS AND VALUES

FACSIMILE TRANSMITTAL

Date: June 15, 2013

To: Natasha Lear
Environmental Administrator

Fax: (867) 983-2594

From: David Qajaakuttuk Qamaniq
QIA CLO Pond Inlet

Fax: (867) 899-8642

Re: Paniloo Sangoya's
Comments regarding
Baffinland Iron Mines
Request to Amend Project Certificate No. 5

No. Of pages plus cover: 4

☐ Urgent. ☐ Review. ☐ Comments. ☐ Please reply. ☐ Originals will follow. ☒ Originals will not follow unless requested

Notes: Good afternoon Natasha,

Please find attached the above noted.

Should you have any questions or comments please do not hesitate to contact me.

Regards,

būfō

David Qamaniq
Community Liaison Officer

February 5, 2013

Ryan Barry
Executive Director
Nunavut Impact Review Board
P.O. Box 1360 (29 Mitik)
Cambridge Bay, NU
XOB OCO

Dear Ryan,

RE: Baffinland's Request to Amend the River Project Certificate No.005

My name is Paniloo Sangoya, I am a member of Pond Inlet Qikiqtani Inuit Association Community Lands and Resources Committee representing Elder's of Pond Inlet I was invited to Pond Inlet Mary River Project Review Committee meeting on January 15, 2013 when QIA Mary River Project Coordinator Solomon Awa was in town for NWB Technical Meeting & Pre-Hearing Conference for Baffinland's Mary River Project Type "A" Water License Application. We discuss Baffinland's Request to Amend the River Project Certificate No.005 prior to NWB Technical Meeting & Pre-Hearing Conference in Pond Inlet.

If I may, I would like to make the following recommendations to NIRB for their consideration and I believe they are legitimate concerns;

THE FOLLOWING ARE QUESTIONS and ANSWERS

- 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) and (c), and if so, which provisions of the NLCA trigger the reconsideration?
- According to Qikiqtani Inuit Association's (QIA) review of (NLCA) and NIRB's Rules and Procedures there is no clear procedure guiding how a party may file a request to reconsider a Project Certificate.
- Whether, at this point the parties have identified any specific terms and conditions within the Project Certificate No.005 that would need to be reconsidered or amended to reflect the early revenue Option?
- According to QIA, based on the information provided by the proponent QIA cannot determine if the specific terms and conditions should be reconsidered or amended at this time, detailed list of term and conditions that would require reconsideration or amendment should take place at a later date to consider the proposed project

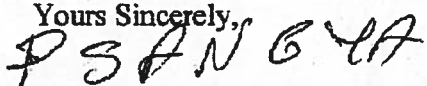
transportation, environmental and social interactions that a number of terms and conditions will require additional examination.

Based on limited information provided by the proponent I like to request that more information be provided by BIM to better understand the potential environmental effects with additional emphasis on fresh water and air quality, the potential effects to marine mammals and Inuit harvesters due to the prolong trucking and storage of the ore also due to suggested changes to marine transportation as well as socio-economic environment. All of these things will require additional assessment, planning and monitoring plans.

- Whether 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?
- Yes, amending the Project Certificate has potential to arouse significant public concern if insufficient information, as it is the case now, is provided to the public.
We do not want to be in a similar situation when the Bulk Sampling Program was initiated without our consent. Seals and marine mammal movements were affected just from the Bulk sampling program.
- Whether parties have comments or concerns regarding potential format of the update or addendum to the existing Final Environmental Impact Statement require to support the 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 request to reconsider terms and conditions of the Project Certificate by NIRB?
- I (On behalf of the Elder's of Pond Inlet) request that an addendum FEIS be filed before NIRB. Such addendum should contain updated baseline information, impact predictions, management and mitigations plans associated with the proposed project changes.
- Any matter of importance to the party related to request to reconsider the terms and conditions of the project Certificate by the NIRB?
- The people of Pond Inlet were not made fully aware what was in DEIS for Milne Inlet.

We the residence of Pond Inlet feel the assessment will need to go through the NIRB process, it requires reconsideration. There is need for NIRB to ask Minister to reopen the Project Certificate.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'PSANGYA'.

Paniloo Sangoya
Pond Inlet Elder