

Ministre des Affaires autochtones
et du développement du Nord



Minister of Aboriginal Affairs and
Northern Development

AVR 28 2014
APR 28 2014

Ottawa, Canada K1A 0H4

VIA FACSIMILE: 867-983-2594

Ms. Elizabeth Copland
Chairperson
Nunavut Impact Review Board
PO Box 1360
CAMBRIDGE BAY NU X0B 0C0



Dear Ms. Copland:

Thank you for your letter of March 17, 2014, in which you conveyed your assessment and recommendations as contained in the Public Hearing Report for Baffinland Iron Mine Corporation's Mary River Early Revenue Phase Proposal. The ministers of Environment Canada, Fisheries and Oceans Canada, Natural Resources Canada, Transport Canada and I, as the Ministers with regulatory jurisdiction for the Mary River Project, have authority to accept, reject or vary the recommendations in this report pursuant to sections 12.8.3 and 12.6.13 of the Nunavut Land Claim Agreement.

As described in the report, the Nunavut Impact Review Board has conducted a reconsideration of Project Certificate No. 005 pursuant to section 12.8.2 of the Nunavut Land Claim Agreement and has recommended the acceptance of the Project with modification to 44 of the previously approved 182 Terms and Conditions and the addition of 8 new Terms and Conditions.

The other Ministers and I are pleased with the work undertaken by the Review Board for this reconsideration process as well as with your collaborative work with the Nunavut Planning Commission as they considered possible amendments to the North Baffin Regional Land Use Plan.

With respect to the latter point, I want to inform the Review Board that I have responded separately today to the Nunavut Planning Commission indicating my acceptance of their recommended North Baffin Regional Land Use Plan - Milne Inlet Tote Road and Marine Transportation Corridor amendment. Assuming the Government of Nunavut also accepts this amendment, these decisions should allow the Planning Commission to confirm its positive conformity determination for the Mary River Early Revenue Phase.

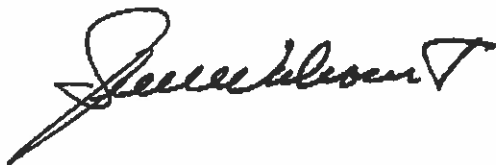
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Having carefully considered the Review Board's Public Hearing Report and the Mary River Project's previously approved decision (as reflected in the Nunavut Impact Review Board Project Certificate No. 005), and the other Ministers with regulatory jurisdiction for this Project, I accept the Review Board's recommendation that the Mary River Early Revenue Phase Proposal may proceed subject to terms and conditions. Integral to this decision, my colleague Ministers and I have varied some of the Review Board's recommended terms and conditions and rejected one on the grounds that these were more onerous than necessary or not onerous enough to mitigate potential impacts to an acceptable level. The enclosed document details these variances and their associated rationale. We trust that you will proceed as quickly as possible to complete these revisions to the Project Certificate for this important project.

On behalf of my colleagues, I thank you for effectively and efficiently discharging your duties under the Nunavut Land Claim Agreement.

Sincerely,



Bernard Valcourt, PC, QC, MP

Encl.

c.c.: The Honourable Leona Aqlukkaq, PC, MP
The Honourable Gail Shea, PC, MP
The Honourable Lisa Raitt, PC, MP
The Honourable Shelly Glover, PC, MP
The Honourable Greg Rickford, PC, MP
The Honourable Johnny Mike, MLA
Mr. Percy Kabioona
Ms. Cathy Towtongie
Ms. Okalik Eegeesiak
Mr. Tom Paddon

**APPROVED MODIFICATIONS TO THE TERMS AND CONDITIONS
OF THE MARY RIVER PROJECT (TO INCLUDE EARLY REVENUE PHASE ACTIVITIES)**

In accordance with sections 12.8.3 and 12.6.13 of the *Nunavut Land Claim Agreement* and with the rationales presented herein, the Ministers with regulatory jurisdiction for the Mary River project have agreed to the following modifications to the Nunavut Impact Review Board's (the Review Board) recommendations for the Mary River Project Certificate (NIRB Certificate No. 005) reconsideration which assessed impacts resulting from the Early Revenue Phase Proposal. All other Review Board recommendations regarding the terms and conditions for the Mary River Project Certificate (i.e. those not referenced below, but detailed in the Public Hearing Report of the Mary River Early Revenue Phase) are accepted as proposed.

Term and Condition #103: Marine Environment – Traffic Log and Shipping Information

Although Ministers generally agree with the Review Board's recommendation that this Term and Condition should apply to the Early Revenue Phase activities, there are ice-related reporting activities associated with this Term and Condition that would not be applicable to the northern shipping route, where ice-breaking is not part of the approved project. Applying ice-related terms to the northern route would therefore be more onerous than necessary, for the Early Revenue Phase. Shipping by the Proponent utilizing the northern shipping route through Milne Inlet is to occur during open-water season only and, as such, ice-breaking related reporting would not be required in the Early Revenue Phase of the Mary River project.

For added clarity, the Ministers have therefore modified the Term and Condition to reflect the conditional application of some reporting requirements only to places and times where ice-breaking activities are or may be undertaken. This Term and Condition will continue to require an annual report based on shipping during the ice-free season to monitor the effectiveness of mitigation of shipping impacts to marine wildlife.



Original Term and Condition #103 (Project Certificate)	Board Proposed Term and Condition #103 Revisions	Ministers' Final Approved Term and Condition #103
The Proponent shall report annually to the NIRB regarding project-related ship track and sea-ice information, including: a. A record of all ship tracks taken along both shipping routes covering the entire shipping season; b. An overlay of ship tracks onto ice imagery to determine whether ships are effectively avoiding shore leads and polynyas; c. A comparison of recorded ship tracks to the expected nominal shipping route, and probable extent of year-round shipping during periods of ice cover and open-water; d. An assessment of the level of adherence to the nominal shipping route and the spatial extent of the shipping zone of influence; and e. Marine bird and mammal species and number of individuals attracted to ship tracks in ice.	No changes proposed by the Review Board though confirmation that this Term and Condition should apply to the Early Revenue Phase is noted on page 124.	The Proponent shall report annually to the NIRB regarding project-related ship track and sea-ice information, including: a. A record of all ship tracks taken along both shipping routes covering the entire shipping season; b. When employing ice-breaking, an overlay of ship tracks onto ice imagery to determine whether ships are effectively avoiding shore leads and polynyas; c. A comparison of recorded ship tracks to the expected nominal shipping route, and probable (if any) extent of year-round shipping during periods of ice cover and open-water; d. An assessment of the level of adherence to the nominal shipping route and the spatial extent of the shipping zone of influence; and e. When employing ice-breaking, marine bird and mammal species and number of individuals attracted to ship tracks in ice.

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Term and Condition #106: Marine Environment – Shipboard Observers

As recommended by the Nunavut Impact Review Board, it is agreed that Term and Condition #106 must be amended. However, the recommended wording of this Term and Condition is varied by the Ministers for greater clarity, as per below, to make reference to the applicable regulations that would ensure required lighting for safe navigation of a vessel while still meeting the requirement for shipboard observation.

Original Term and Condition #106 (Project Certificate)	Board Proposed Term and Condition #106 Revisions	Ministers' Final Approved Term and Condition #106
The Proponent shall ensure that shipboard observers are employed through all seasons and provided with the means to effectively carry out assigned duties. The role of shipboard observers in shipping operations should be taken into consideration during the design of ore carriers, with climate controlled stations and shipboard lighting incorporated to permit visual sightings by shipboard observers during all seasons and conditions.	The Proponent shall ensure that shipboard observers are employed during seasons where shipping occurs and provided with the means to effectively carry out assigned duties. The role of shipboard observers in shipping operations should be taken into consideration during the design of any ore carriers purpose-built for the Project, with climate controlled stations and shipboard lighting incorporated to permit visual sightings by shipboard observers during all seasons and conditions.	The Proponent shall ensure that shipboard observers are employed during seasons where shipping occurs and provided with the means to effectively carry out assigned duties. The role of shipboard observers in shipping operations should be taken into consideration during the design of any ore carriers purpose-built for the Project, with climate controlled stations and shipboard lighting incorporated to permit visual sightings by shipboard observers during all seasons and conditions. Any shipboard lighting incorporated should be in accordance with the <i>Canada Shipping Act, 2001's Collision Regulations</i> , and should not interfere with safe navigation of the vessel.

Term and Condition #107: Marine Environment – Shipboard Observers

As recommended by the Nunavut Impact Review Board, it is agreed that Term and Condition #107 must be amended. However, the recommended wording of this Term and Condition is varied by the Ministers for greater clarity, as per below, to make reference to the requirement for a Special Flight Operations Certificate, in order to ensure the safety of the public and protection of other users of the airspace during the operation of the unmanned air vehicle.

Original Term and Condition #107 (Protect Certificate)	Board Proposed Term and Condition #107 Revisions	Ministers' Final Approved Term and Condition #107
The Proponent shall revise the proposed "surveillance monitoring" to improve the likelihood of detecting strong marine mammal responses occurring too far ahead of the ship to be detectable by observers aboard the ore carriers. A baseline study early in the shipping operations could employ additional surveillance to detect potential changes in distribution patterns and behavior. At an ambitious scope, this might be achieved using unmanned aircraft flown well ahead of ships, or over haul-out sites in the case of walrus.	The Proponent shall revise the proposed "surveillance monitoring" to improve the likelihood of detecting strong marine mammal, seabird or sealuck responses occurring too far ahead of the ship to be detectable by observers aboard the ore carriers. A baseline study early in the shipping operations could employ additional surveillance to detect potential changes in distribution patterns and behavior. At an ambitious scope, this might be achieved using unmanned aircraft flown well ahead of ships, or over known areas of importance for seabirds or haul-out sites in the case of walrus.	The Proponent shall revise the proposed "surveillance monitoring" to improve the likelihood of detecting strong marine mammal, seabird or sealuck responses occurring too far ahead of the ship to be detectable by observers aboard the ore carriers. A baseline study early in the shipping operations could employ additional surveillance to detect potential changes in distribution patterns and behavior. At an ambitious scope, this might be achieved using unmanned aircraft flown well ahead of ships, or over known areas of importance for seabirds or haul-out sites in the case of walrus, in accordance with the requirements of their Special Flight Operations Certificate.

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Terms and Conditions #118, #139 and # 177 (Various subjects)

The Review Board's Mary River Early Revenue Phase Public Hearing Report contains three inconsistencies in the text related to Terms and Conditions #118, 139 and 177; however, the Ministers believe we have correctly understood the Review Board's intended meaning, and accept that meaning in respect of #118, 139 and 177. In each case, the Review Board has stated in different pages of the Report that each of these Terms and Conditions required minor revision and then stated in another section that it did not require modification. The Report's summary of proposed wording changes to existing measures does not include any reference to Terms and Conditions #118 and #177. This summary does however recommend a change for Term and Condition #139.

Upon review and for decision clarity, the Ministers with jurisdiction for these Terms and Conditions have affirmed Terms and Conditions #118 and #177 as originally worded, i.e. no change due to the Early Revenue Phase. Term and Condition #139 is also accepted with revisions as proposed in the summary section of the Review Board Report, as per below.

Original Term and Condition #118 (Project Certificate)	Board Proposed Term and Condition #118 Revisions	Ministers' Final Approved Term and Condition #118
The Proponent shall incorporate into the appropriate mitigation plan prior to construction, thresholds for the use of specific mitigation measures meant to prevent or limit marine wildlife disturbance, such as bubble curtains for blasting, and nitrate removal.	On page 124 of the Public Hearing Report, the Review Board stated this Term and Condition required minor revision for application to the Early Revenue Phase; however, the summary section of the proposed Term and Condition modifications that starts on page 168 contains no proposed revision for this Term and Condition.	Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.

Original Term and Condition #177 (Project Certificate)	Board Proposed Term and Condition #177 Revisions	Ministers' Final Approved Term and Condition #177
The Proponent shall enroll any foreign flagged vessels commissioned for Project-related shipping within Canadian waters into the relevant foreign program equivalent to Transport Canada's Marine Safety Delegated Statutory Inspection Program.	On page 148 of the Public Hearing Report, the Review Board stated this Term and Condition required minor revision for application to the Early Revenue Phase; however, the summary section of the proposed Term and Condition modifications that starts on page 168 contains no proposed revision for this Term and Condition.	Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.

Original Term and Condition #139 (Project Certificate)	Board Proposed Term and Condition #139 Revisions	Ministers' Final Approved Term and Condition #139
Prior to commencing construction, the Proponent is requested to undertake and provide the results of a detailed labour market analysis which provides quantitative predictions of the number of employees that may reasonably need to be sourced from southern Canada and from foreign markets, identifying where applicable, the country of origin for the foreign labour.	Prior to commencing construction, the Proponent is requested to undertake and provide the results of a detailed labour market analysis which provides quantitative predictions of the number of employees that may reasonably need to be sourced from southern Canada and from foreign markets, identifying where applicable, the country of origin for the foreign labour. Within 90 days of the issuance of the Project Certificate, the Proponent is required to submit an updated labour Market Analysis which considers requirements of the Early Revenue Phase as well as hiring points within Nunavut and outside of the North Baffin region and Regional Study Area. <i>(Although page 129 of the Public Hearing Report stated this measure was not proposed to be modified, page 132 proposed that it should be and the summary section of the proposed Term and Condition Modifications that starts on page 168 contains the above revised wording for this Term and Condition.)</i>	Ministers confirm the Review Board's proposed wording change for this term and condition as referenced on page 207 of the Report. This Term and Condition will apply equally as modified to all aspects of the Mary River Project, including the Early Revenue Phase.



Term and Condition #171: Accidents and Malfunctions – Terrestrial Wildlife Management and Monitoring Plan

Term and Condition #171 has been recommended for revision by the Nunavut Impact Review Board to address the increased potential for incidences, during Early Revenue Phase activities, between truck traffic on the Milne Inlet Tote Road and caribou that may use the roadway as a corridor for moving between locations. As recommended by the Nunavut Impact Review Board, it is agreed that Term and Condition #171 must be amended; however, the recommended wording of this Term and Condition is varied by the Ministers for application clarity to ensure that the Term and Condition will sufficiently mitigate any potential harm to caribou from rail or vehicular traffic.

Original Term and Condition #171 (Project Certificate)	Board Proposed Term and Condition #171 Revisions	Ministers' Final Approved Term and Condition #171
The Proponent shall include within its updated Terrestrial Wildlife Management and Monitoring Plan, a commitment to establish deterrents along the railway embankment at any areas where it is determined that caribou are utilizing the embankment to facilitate movement and where such movement presents a likelihood of caribou mortality to occur.	The Proponent shall include within its updated Terrestrial Wildlife Management and Monitoring Plan, a commitment to establish deterrents along the railway embankment at any areas where it is determined that caribou are utilizing the embankment and Tote Road to facilitate movement and where such movement presents a likelihood of caribou mortality to occur.	The Proponent shall include within its updated Terrestrial Wildlife Management and Monitoring Plan, a commitment to establish deterrents along the railway and Tote Road embankments at any areas where it is determined that caribou are utilizing the embankments or transportation corridors to facilitate movement and where such movement presents a likelihood of caribou mortality to occur.



Term and Condition #179 (c): Cumulative Effects – Capacity Reserve

As recommended, this term and condition would prohibit the total volume of ore mined from Deposit #1 from exceeding 18 million tonnes per annum for both the earlier Approved Mary River Project and the Early Revenue Phase Proposal, despite the stated intention of the Proponent to make the ore shipping volume processed through Milne Inlet (4.2 million tonnes maximum) additive to the ore to be transported out by railway and Stearnsby Inlet (18 million tonnes maximum).

It is the view of the Ministers with regulatory jurisdiction for the Mary River project that this term and condition, which places a limit on the mine ore production rate at 18 million tonnes per annum, is more onerous than necessary to mitigate potential impacts. The Review Board, in its Public Hearing Report, has not adequately substantiated potential adverse ecosystemic and/or socio-economic impacts, including cumulative impacts, to any of the valued components (e.g. marine mammals, air quality, jobs, financial viability of project and resulting community benefits, etc.) that might result from and therefore require mitigation of the concurrent implementation of the northern and southern transportation and shipping activities. Term and Condition #179(c) is therefore rejected.

Original Term and Condition (Project Certificate)	Board Proposed New Term and Condition #179 (c)	Ministers' Final Approved Status - Rejection of Term and Condition #179(c)
None -- This is a new term and condition.	When mining commences under both the Approved Project and the Early Revenue Phase Proposal, the total volume of ore mined from Deposit #1 in any given calendar year shall not exceed 18 million tonnes.	The responsible Ministers have rejected this proposed new term and condition on the basis that it is more onerous than necessary. The Review Board has not presented adequate evidence to support the assertion that this term and condition would mitigate adverse socio-economic and ecosystemic impacts, including cumulative impacts.



Terms and Conditions #180-182: Transboundary Effects

Terms and Conditions #180-182 of the Project Certificate address potential transboundary impacts of the Project and require that the Makivik Corporation be invited to participate in the Marine Environment Working Group, be provided with regular updates on activities of the Marine Environment Working Group, and be provided with ship route deviation reports from the Proponent. The Review Board indicated in the Public Hearing Report that these terms would not apply to the Early Revenue Phase activities. This appears inconsistent with Terms and Conditions #77 and #127 that are proposed to apply to the Early Revenue Phase and respectively allow Makivik to participate as members of the Marine Environment Working Group (without limitation) and ensure Nunavik communities are kept informed of shipping activities.

It is the view of the Ministers that there should be consistency among the Terms and Conditions regarding transboundary interests associated with the Project and that Makivik may have interest in and can provide valuable insight into mitigating transboundary impacts whether the Mary River Project employs the northern or the southern shipping routes. Therefore, the Ministers have decided that Terms and Conditions #180-182 will apply to all aspects of the Mary River Project, including the Early Revenue Phase.

Original Term and Condition #180 (Project Certificate)	Board Proposed Term and Condition #180 Revisions	Ministers' Final Approved Term and Condition #180
The Marine Environment Working Group established for this Project shall invite a representative from Makivik Corporation to be a member of the Group	No changes proposed by the Review Board though confirmation that this Term and Condition should NOT apply to the Early Revenue Phase is noted on page 166 of the Report.	Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.
Original Term and Condition #181 (Project Certificate)	Board Proposed Term and Condition #181 Revisions	Ministers' Final Approved Term and Condition #181
To enable Makivik Corporation and Nunavik communities near shipping lanes to remain informed and involved in those shipping activities which could affect the marine environment and marine mammals.	No changes proposed by the Review Board though confirmation that this Term and Condition should NOT apply to the Early Revenue Phase is noted on page 166 of the Report.	Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.
Original Term and Condition #182 (Project Certificate)	Board Proposed Term and Condition #182 Revisions	Ministers' Final Approved Term and Condition #182
Baffinland shall make available to Makivik Corporation any ship route deviation reports provided to the NIRE in accordance with the terms and conditions set out in Section 4.12.4 of the Final Hearing Report.	No changes proposed by the Review Board though confirmation that this Term and Condition should NOT apply to the Early Revenue Phase is noted on page 166 of the Report.	Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.