



NIRB File No.: 08MN053

NWB File No.: 2AM-MRY1325 (Amendment No. 2)

DFO File No.: 07-HCAA-CA7-0050

August 27, 2015

Erik Madsen

Vice President Sustainable Development, Health, Safety & Environment

Baffinland Iron Mines Corporation

2275 Upper Middle Road East, Suite 300

Oakville, ON, L6H 0C3

Sent via email: erik.madsen@baffinland.com

Re: NIRB's Determination that Reconsideration of Terms and Conditions within Project Certificate No. 005 is Required for Baffinland's Phase 2 Development Project Proposal

Dear Erik Madsen:

By way of this letter, the Nunavut Impact Review Board (NIRB or Board) is advising Baffinland Iron Mines Corporation (Baffinland or the Proponent) and parties of 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 NIRB on December 28, 2012 and amended on May 28, 2014 for the Mary River Project (NIRB File No. 08MN053). The NIRB has also provided an update under separate cover to the Minister of Aboriginal Affairs and Northern Development (the Minister), allowing opportunity for the Minister to provide proposed priorities and timelines for the NIRB's reconsideration process if desired.

In making its determination, the Board has concluded that:

- The changes to specific activities as proposed in Baffinland's "Phase 2 Development" Project description as submitted to the Board on October 29, 2014 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 through reconsideration of the comprehensive terms and conditions of the existing Project Certificate No. 005; and
- The proposed project activities and amendments have not, to date been subject to impact assessment by the Board and also have not been subject to full public technical review, public comment or approval by the various responsible authorities.

PROCEDURAL HISTORY REGARDING THE RECONSIDERATION REQUEST

On October 29, 2014 the NIRB received a “Phase 2 Development” project proposal from Baffinland, which outlined proposed modifications to the activities previously approved under NIRB Project Certificate [No. 005] for the Mary River Project. In providing its Phase 2 Development project proposal to the NIRB, Baffinland requested a formal reconsideration of the terms and conditions of the Mary River Project Certificate pursuant to section 12.8.2 of the NLCA, to determine if the proposed project amendment could proceed. Baffinland also provided the project description to the Nunavut Planning Commission (NPC) on October 29, 2014 with an application for a conformity determination against the requirements of the North Baffin Regional Land Use Plan (NBRLUP).

On October 31, 2014 the NIRB issued correspondence, followed by a news release on November 6, 2014, advising the Proponent and interested parties that the Board would await receipt of confirmation from the NPC that the Phase 2 Development project proposal conformed to the requirements of the North Baffin Regional Land Use Plan prior to the Board considering Baffinland’s reconsideration request. On April 8, 2015 the Nunavut Planning Commission provided notification to the NIRB that the Phase 2 Development project proposal did not satisfy the conformity requirements of the NBRLUP.

On May 21, 2015 Baffinland applied to the Minister of Aboriginal Affairs and Northern Development for an exemption from the NBRLUP for its Phase 2 Development project proposal in accordance with Article 11, Section 11.5.11 of the NLCA. On July 14, 2015 the Board received correspondence from the Minister of Aboriginal Affairs and Northern Development exempting Baffinland’s Phase 2 Development project proposal from the requirement for conformity with the NBRLUP and referring the project proposal to the NIRB for assessment.

On July 22, 2015 the NIRB requested that interested parties review Baffinland’s “Phase 2 Development” project proposal and provide comments to the NIRB by August 5, 2015 (later extended to August 19, 2015 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 NLCA, Section 12.8.2 (a), (b), or (c), and if so, which provisions of the NLCA trigger the reconsideration;
- Whether, at this point the parties have identified any specific terms and conditions within the existing Project Certificate that would need to be reconsidered or amended to reflect the Phase 2 Development Project Proposal;
- Whether a reconsideration of the existing Project Certificate terms and conditions is likely to arouse significant public concern, and if so, a description of the basis for the concern;
- Whether parties have comments or concerns regarding the potential content and/or format of any update or addendum to the existing Final Environmental Impact Statement required to support the reconsideration of existing Project Certificate; and

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

On or before August 19, 2015 the NIRB received comments from the following parties:

- Qikiqtani Inuit Association
- Government of Nunavut
- Aboriginal Affairs and Northern Development Canada
- Environment Canada
- Fisheries and Oceans Canada
- Natural Resources Canada
- Parks Canada
- Transport Canada
- World Wildlife Fund
- Helen Gerson

COMMENTS AND CONCERNS

The following Table 1 represents a brief *summary* of the comments and concerns received during the public commenting period on Baffinland's reconsideration request for its Phase 2 Development proposal; please note that the original comment submissions are accessible online from the NIRB's public registry at the following address:

<http://ftp.nirb.ca/03-MONITORING/08MN053-MARY%20RIVER%20IRON%20MINE/01-PROJECT%20CERTIFICATE/04-AMENDMENTS/02-PHASE%202/03-COMMENTS/>

Table 1: Baffinland Reconsideration Request

Summary of Key Comments, Concerns and Issues

Party	12.8.2 Trigger	Applicable Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Qikiqtani Inuit Association	Yes, 12.8.2 (b)	A more complete project description required to determine impacts of the proposal. Several terms and conditions may need to be examined, revised, and new conditions imposed to address potential impacts of Phase 2 proposal.	Yes, due to potential increase in Tote road traffic, as well as impacts to caribou and caribou calving, dust emission, water quality, and ice breaking activities.	A clear and transparent distinction between supporting materials carried forward from any previous EIS, and that newly developed for Phase 2 Development Project proposal.	No IIBA exists for Phase 2; pursuant to Sections 9.1.1 of the IIBA and NLCA 26.2.1, the IIBA must be completed prior to commencement of any Phase 2 activity. QIA is concerned about availability of intervener funding for public and community groups during Phase 2 review process. Adaptive management should be required in dealing with human and environmental impact as well as untested mitigation measures for Phase 2.
Government of Nunavut	Yes, 12.8.2(b)	No specific terms and conditions yet; however, many may require review in the context of the new information provided in an updated/addendum to the FEIS for Phase 2. The proposed activities for Phase 2 may require additional terms and conditions in order to mitigate any potential impacts.		Information on activities and potential impacts should be included in an addendum to the FEIS, and include updates to existing baseline, mitigation measures, monitoring methods and management plans, as well as public health risk assessment of the destabilization of ice across traditional travel routes.	The NIRB should complete a review process that involves the full participation of communities and members of the public. The GN intends to participate in the assessment process of the potential environmental and socio-economic impacts of Phase 2 development project proposal.

Party	12.8.2 Trigger	Applicable Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Aboriginal Affairs and Northern Development Canada	Unknown as unclear if financial constraints as noted in the ERP now differ significantly for the Phase 2 proposal.	Reconsideration required for terms and conditions associated with hydrology and hydrogeology, ground/surface waters, baseline studies, monitoring plans, ice breaking related activities, adaptive management plans. Additional terms and conditions may be developed to mitigate potential impacts that may arise.	Yes, as the proposal includes ice breaking activities and extending shipping activities to 10 months a year.	Standalone addendum to the FEIS and ERP Addendum should clearly highlight the changes associated with the proposed Phase 2 amendment, and include thorough analysis of potential cumulative impacts arising from additional amendments. Addendum should also note which terms and conditions were amended as a result of the ERP, as well as those that require amendment as a result of Phase 2.	Baffinland has now re-introduced the option of using the northern shipping route, which was initially considered “technically infeasible” and was eventually a rejected option for the original project. AANDC suggests that if the northern shipping option is now considered, the change in circumstances is to be included as part of the application to the NIRB for assessment for Phase 2.
Environment Canada	Yes, 12.8.2(b)	Phase 2 proposal is limited in details to allow EC provide a list of terms and conditions requiring modification. EC preliminarily identified conditions 9, 99c(iii), 105c for reconsideration, and noted that other terms and conditions may be amended to address specific components of the proposed Project.	Yes, resulting from increased ship traffic, trans-shipment of ore and extension of shipping season to 10 months.	Stand-alone impact assessment focusing on Phase 2 proposal should indicate how conditions and commitments relevant to the proposed activities will be met, and how Phase 2 will affect the impacts and mitigation identified in the review to date.	It is of particular importance to clearly understand impacts to the marine environment, as well as impacts of shipping disturbance and accidental spills on migratory birds and marine mammals in Milne Inlet, Eclipse Sound, Pond Inlet and Baffin Bay.

Party	12.8.2 Trigger	Applicable Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Fisheries and Oceans Canada	Yes, 12.8.2(b)	Preliminarily identified conditions 14-16, 19, 44-45, 47, 48, 48(a), 76-128, 179,179a and 179b for reconsideration, and noted that other terms and conditions may be reconsidered as well, and noted there may be requirement for additional terms and conditions.	Yes, concern regarding potential impacts on marine valued ecosystem components from longer shipping season including ice breaking activities.	Addendum should be a standalone document focused on Phase 2, and should build on the previous discussions and agreement reached during the technical review of the original project and ERP. It should include a consideration of any potential changes to the remaining project, and whether previously assessed impacts remain valid.	
Natural Resources Canada	Yes, 12.8.2(b)	Project description provides limited information; however with respect to permafrost, terms and conditions 25 to 30 could be of general applicability and as such, may be sufficiently broad to encompass the changes proposed in the Phase 2 Development proposal.		Updated technical information is required to support conclusion related to potential impacts to coastal geomorphology and permafrost would be useful in confirming that the terms and conditions are adequate as written and that additional terms and conditions are not required.	Parties need to have a clear understanding of the procedures for reconsideration, as well as a clear project description of what is being considered.

Party	12.8.2 Trigger	Applicable Terms and Conditions	Public Concern	Suggested Format for Update/Addendum	Additional Issues
Parks Canada	Yes, 12.8.2(b)	Unable to supply complete list, but anticipate amendments to conditions 91, 93, 99, 101, 105, 150, 164, 175, 176, 179(a) and 179(b). PC notes that new terms and conditions may also need to be added to ensure that all potential impacts are mitigated.	Yes, as a result of ice breaking activities in Milne Inlet and around Eclipse Sound.	Standalone addendum must contain all information on the Project amendment, and should indicate which terms and conditions Baffinland will be applying specifically to the amended portion of the project.	
Transport Canada	Yes, 12.8.2(b)	Anticipate amendments to conditions 9, 90-91, 93-96, 177 and 179 to reflect the increase in marine shipping activities and construction of a second dock at Milne Inlet for Phase 2.	Yes, additional number of transits and the increase in duration annually into and out of the Mine Port facility.	Standalone addendum that details the changes to the Project with coordinated references to specific portions of the original FEIS.	Determine whether guidelines issued for the development of the original EIS are appropriate for Phase 2. Reconsideration process may require a series of information requests and technical meetings, as well as a public hearing if deemed necessary.
World Wildlife Fund Canada	Yes, 12.8.2 reconsideration				WWF intends to participate in any environmental impact assessment process to review the Phase 2 project proposal.
Helen Gerson	Should not be permitted to proceed		Yes, from impacts of shipping year round and impacts to marine wildlife from noise, oil spills and invasive species.		Due to changing prices of iron ore, Baffinland asking the people living in the Arctic to assume the burden of an increased environmental risk; NIRB should review all relevant research and consider that the impacts are too great to allow 10 month shipping.

BOARD DETERMINATION

Reflecting the Board's review of Baffinland's description of the Phase 2 Development, amended Project Certificate No. 005, and NIRB's Public Hearing Reports for the Mary River Project, as well as comments and concerns received during the public commenting period, the Board has made the following determinations.

The proposed activities for the Phase 2 Development 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 these changes are most appropriately assessed pursuant to NLCA Section 12.8.2. In making this determination, the Board has decided that the proposed activities do 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.

The Board accepts the submissions of 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 new components and activities introduced in the Phase 2 Development are significantly different from those anticipated at the time that the May 28, 2014 version of the Project Certificate was issued, and have not, to date been subject to impact assessment by the Board.

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. The Board's reconsideration will determine whether the proposed Project amendments should be allowed to proceed and, if so, whether the wording of specific Terms and Conditions within the Project Certificate would require updating and/or inclusion of additional Terms and Conditions.

ANTICIPATED NEXT STEPS IN THE NIRB'S RECONSIDERATION PROCESS

The NIRB is required to assess the environmental and socio-economic impacts associated with the proposed Phase 2 Development for the Mary River Project. To facilitate the assessment of the project amendment, the NIRB will require that Baffinland prepare a comprehensive addendum to the Final Environmental Impact Statement (Final EIS) describing all aspects of the proposed Phase 2 Development, including updates to relevant baseline data, impact predictions, proposed mitigation measures, monitoring plans and proposed community consultation. As requested by parties, the FEIS Addendum must also include a concordance table demonstrating compliance with the EIS Guidelines for the Mary River Project and should be prepared as a stand-alone document capable of supporting an intervenor and public review, comment and assessment process.

Under separate cover in the coming days, the NIRB will request that the Proponent and parties review the EIS Guidelines and Addendum to EIS Guidelines previously issued to Baffinland for the Mary River Project to assist in determining the applicability of the various information requirements and details regarding any additional direction that should be provided.

Upon receipt of Baffinland's Addendum, the NIRB will conduct an internal check of the submission for conformity with the EIS Guidelines issued for this reconsideration process. Should the NIRB determine the FEIS Addendum conforms with the EIS Guidelines, the Board will accept the submission and initiate a 90 day public review consisting of an initial 30 day information request period followed by a 60 day technical review period, as well as the facilitation of public information sessions in the potentially affected communities. The NIRB will also solicit public input into the need/utility of scheduling of a meeting of technical experts (i.e., Technical Meeting) and the most appropriate format for a public hearing (written, teleconference or in person) in support of this reconsideration process.

Following the completion of the public review period and public hearing, the Board will prepare a report detailing its reconsideration and recommendations for the Minister of Aboriginal Affairs and Northern Development pursuant to NLCA s. 12.8.3.

In closing, should any questions or clarification regarding the reconsideration process arise, please contact Solomon Amuno, Technical Advisor and the NIRB's Monitoring Officer for the Mary River Project at (867) 983-4603 or via email at samuno@nirb.ca

Sincerely,

A handwritten signature in black ink that reads "Ryan Barry". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Oliver Curran, Baffinland Iron Mines Corporation
Mary River Distribution List