



NIRB File No.: 08MN053

August 27, 2015

The Honourable Bernard Valcourt
Minister of Aboriginal Affairs and Northern Development
10 rue Wellington
Gatineau, QC K1A 0H3

Sent via email, fax and regular mail: minister@aandc.gc.ca; bernard.valcourt@parl.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 "Phase 2 Development" Mary River Project Proposal

Dear Mr. Bernard Valcourt:

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 to Baffinland Iron Mines Corporation (Baffinland or the Proponent) on December 28, 2012 and amended on May 28, 2014 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 would also like to provide opportunity for the Minister provide 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 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 comprehensive reconsideration of the 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 technical review by the parties, public comment or approval by the various responsible authorities.

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 October 29, 2014, and by direction of the Minister of Aboriginal Affairs and Northern Development in the decision to exempt the Phase 2 Development project proposal from the requirement for conformity to the North Baffin Regional Land Use Plan in accordance with Section 11.5.11 of the NLCA, 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 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 Canada
- Helen Gerson

All materials received and pertaining to Baffinland's project description, and request to reconsider the terms and conditions of the Mary River Project Certificate [No. 005], including submissions received in response to the Board's July 22, 2015 request for comments are available from the NIRB's online public registry at:

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

PROPOSED CHANGES TO THE PROJECT

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 Early Revenue Phase, which was allowed to proceed under Amended Project Certificate No. 005, involved the amendment of specific project components and activities to allow for reduced mining activity to occur 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.

Baffinland, through its "Phase 2 Development" project proposal, is proposing to increase shipment of iron ore from Milne Port as approved under the terms and conditions of the current Project Certificate from 4.2 million tonnes per annum (mtpa) to 12 mtpa for the life of the Mary River Project (estimated at 21 years). Baffinland also proposes to extend the annual shipping season of its northern shipping route from June through March. The proposed increased ore shipments from Milne Port would be facilitated through the establishment of a second dock at

Milne Port. Two polar class ice-breaking Panamax self-discharging vessels would be operated annually from June through March, with additional market vessels during the open water shipping season of mid-July through mid-October. At the Mary River mine site, the nominal mining rate would be increased to 30 mtpa, with establishment of additional transitional facilities for fuel storage and temporary accommodations, and increased usage of existing infrastructure constructed for the approved Mary River project.

The Proponent has noted that the proposed project amendment would result in increased utilization of the Milne Inlet Tote Road for haulage of up to 12 mtpa of iron ore including: twinning of bridges; widening of the Milne Inlet Tote Road; twinning of sections of the road and realignment and grade improvements. The Proponent indicated that the proposed modifications to the Milne Inlet Tote Road would facilitate haulage of iron ore by ore trucks from the Mary River mine site to the Milne Port corresponding to up to 300 round trips per day.

At Milne Port, placement and expansion of the following infrastructure would be required:

- A tank farm to accommodate up to 140 million litres of fuel;
- Stockpiling of 6 million tonnes of iron ore;
- Camp and sewage treatment plant to accommodate peak construction work force of up to 500 persons, with 400 persons during the operations phase;
- Additional service buildings; and
- Use of Polar Class Post Panamax sized self-discharging ore carrier for ship-to-ship transfer of ore (i.e., trans-shipping) utilizing a conveyor system.

Baffinland projects that the proposed Phase 2 Development project would not change the project development area (PDA) at the Mary River Mine site and Milne Inlet Tote Road corridor, but that a marginal increase of the PDA could be expected in the marine environment at Milne Port to accommodate the second dock. Consequently, Baffinland has indicated its understanding that the proposed modifications as contemplated for the Phase 2 Development proposal would likely necessitate changes and a second amendment to specific terms and conditions of the current Mary River Project Certificate.

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 to 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, the 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

The NIRB will be providing a letter to Baffinland under separate cover with copy to all parties, outlining in greater detail the process, requirements and timelines applicable to the next steps in the NIRB's reconsideration of the terms and conditions of Project Certificate No. 005. In summary, the NIRB expects that an addendum to the Final Environmental Impact Statement (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 will be prepared and filed by Baffinland to support the NIRB reconsideration process. The NIRB will assess the information provided to ensure it meets the requirements of the EIS Guidelines issued for this reconsideration process and will subject the Phase 2 project proposal to a public technical review and public hearing prior to determining whether the proposed project amendments should be permitted to proceed.

It should be noted that the scope of the reconsideration will be limited to reconsideration of those Terms and Conditions of Project Certificate No. 005 requiring amendment or addition to reflect the potential effects of the proposed Phase 2 Development and will not involve the reconsideration of Project Certificate No. 005 in its entirety. At the conclusion of the

reconsideration process, the Board will 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 for amendments and/or additions to the Terms and Conditions of Project Certificate No. 005.

OTHER CONSIDERATIONS

The NIRB recognizes that the Minister may choose to provide direction regarding priorities and reasonable time frames associated with the Board's reconsideration of the Terms and Conditions of Project Certificate No. 005. As such, please be advised that, in addition to various screenings and responsibilities for ongoing monitoring programs, at present the NIRB is also actively engaged with ongoing assessments for the following major development projects:

- Review of Sabina Gold and Silver Corporation's "Back River" Project, NIRB File No. 12MN036
 - Final EIS Submission anticipated in November, 2015
- Project Certificate Reconsideration for Agnico Eagle Mines Limited's "Vault Pit Expansion" proposed amendment to the Meadowbank Gold Mine Project, NIRB File No. 03MN104
 - Technical review of FEIS Addendum underway
- Project Certificate Reconsideration for TMAC Resources Limited's proposed amendment to Doris North Gold Mine Project, NIRB File No. 05MN047
 - Technical review of FEIS Addendum underway

Also, the NIRB would like to highlight for the Minister's consideration a request brought forward by the Qikiqtani Inuit Association (QIA) for intervener funding to be made available:

QIA is also concerned about the availability of intervener funding for members of the public and community groups during the relevant portions of the Phase II review. It is crucial that representations can be made by individuals or groups wishing to do so, and that the associated cost is not a barrier to participation. Any information about availability of intervener funding would be appreciated.

The NIRB's reconsideration processes will ensure there are multiple engagement opportunities for potentially-affected communities, with the Board directly funding measures to ensure potentially-affected parties can be in attendance at key meetings in the process, for example, by covering travel expenses for community representatives to be present at public hearings at a venue outside their home community. The purpose of intervener/participant funding is substantially different however, intended to provide participants with access to the resources and expertise, including support from technical consultants, advisors, legal counsel, to participate effectively in the NIRB's assessment processes. Given the very different purposes, focus and processes associated with intervener funding when compared to the community engagement efforts which can be undertaken by the NIRB, the Board supports the request put forward by the QIA for intervener funding to be made available for this reconsideration process.

CONCLUSION

In closing, the NIRB appreciates the Minister's support for the NIRB's reconsideration of Project Certificate No. 005 and the Board looks forward to receiving any direction the Minister may wish to provide regarding proposed priorities and timelines and the availability of intervener funding for the reconsideration process.

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

Sincerely,



Elizabeth Copland
Chairperson
Nunavut Impact Review Board

cc: Erik Madsen, Baffinland Iron Mines Corporation
P.J. Akeeagok, Qikiqtani Inuit Association
Mary River Distribution List