



NIRB File No.: 08MN053

NWB File No.: 2AM-MRY 1325 (Amendment No. 2)

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

December 19, 2016

Todd Burlingame
VP, Sustainable Development
Baffinland Iron Mines Corporation
2275 Upper Middle Road East, Suite 300
Oakville, ON L6H 0C3

Sent via email: todd.burlingame@baffinland.com

Re: Next Steps in Response to Baffinland Iron Mines Corp.'s Project Update and Associated Changes to the Phase 2 Proposal for the Mary River Iron Mine

Dear Todd Burlingame:

On November 30, 2016, the Nunavut Impact Review Board (NIRB or Board) received a detailed project update (Project Update) from Baffinland Iron Mines Corp. (Baffinland) regarding its Phase 2 Proposal associated with the approved Mary River Iron Mine (NIRB File No. 08MN053). This Project Update was submitted in response to a request from the NIRB for an update and considerably greater detail regarding changes made by Baffinland to the Phase 2 Proposal from what had been originally submitted in October, 2014 and is currently undergoing assessment by the Board. Specifically, the Project Update was required to allow the NIRB to determine the extent to which the addition of a northern rail component constitutes a modification of the Phase 2 Proposal, and if so, whether the modification is a significant modification.

Having now carefully reviewed the Project Update as provided by Baffinland, this correspondence sets out the Board's conclusion that the addition of the northern rail component and associated infrastructure constitutes a significant modification of the Phase 2 Proposal. On the basis of the Board's determination, the NIRB has also provided some preliminary guidance regarding next steps in the applicable regulatory process.

All materials received and pertaining to Baffinland's request for an amendment to the Mary River Project Certificate (Amendment No.2), including the November 30, 2016 Project Update can be obtained from the NIRB's online public by using any of the following search criteria:

- Project Name: Mary River Project
- NIRB File No.: 08MN053
- Application No.: 123910

PROCESS TO DATE

As you are aware, the Phase 2 Proposal was referred to the NIRB for assessment on July 13, 2015 when the Minister of Aboriginal Affairs and Northern Development granted an exemption to the North Baffin Regional Land Use Plan (NBRLUP) for the proposal after the Nunavut Planning Commission had determined the proposal did not conform to the requirements of the NBRLUP. In August, 2015, the NIRB determined that the Phase 2 Proposal established the grounds for reconsideration of the terms and conditions of Project Certificate No. 005 under the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and, given that the submission of the Phase 2 Proposal to the NPC was prior to the coming into force of the *Nunavut Planning and Project Assessment Act (NuPPAA)*, the provisions of the *NuPPAA* would not apply.

Process Timeline	
October 29, 2014	Phase 2 Proposal submitted to NPC by Baffinland
April 8, 2015	NPC Conformity Determination issued
May 21, 2015	Baffinland applies to Minister for exemption to NBRLUP
July 13, 2015	Minister grants exemption to NBRLUP as requested by Baffinland
August 27, 2015	NIRB determines reconsideration of Mary River Project Certificate under the Nunavut Agreement appropriate for assessment of Phase 2 Proposal
October 6, 2015	NIRB issues Guidelines to Baffinland for preparation of a Final Environmental Impact Statement Addendum for the Phase 2 Proposal (EIS Guidelines)
February 16, 2016	Baffinland indicates that preferred option for transport of ore in Phase 2 Proposal has changed from truck transport to transport by rail
February 22, 2016	NIRB requests clarification from the Minister regarding continued applicability of NBRLUP exemption
October 4, 2016	Minister provides response to NIRB indicating that the Board must determine whether modifications to Phase 2 Proposal are significant
October 28, 2016	NIRB requests project update be provided by Baffinland to allow for significance determination
November 30, 2016	Project Update provided by Baffinland

At the outset, the Board notes that Baffinland's proposed revisions to the Phase 2 Proposal as outlined in the Project Update not only include the addition of a northern rail component, the following additional changes to the original scope of the Phase 2 Proposal were also described:

- Changing ore shipping from year round shipping to six months (July 01 to December 31), with a focus on shipping ore primarily during the open water season;
- Associated changes at the Milne Port site to maximize shipping during the open water season which would include increases to the size of the proposed second ore dock and ship loader to accommodate cape-sized vessels;
- Reducing the amount of proposed fuel storage at the Milne Port site; and
- The installation of an enclosed ore crushing facility at the Milne Port site.

The proposed northern rail component added to the Phase 2 Proposal would consist of the following new infrastructure:

- Construction and operation of a 110 kilometre (km) rail line that generally follows the alignment of the existing Tote Road
- Carrying out the following associated components and activities:
 - Installation of railway embankment and track comprised of sub-ballast and ballast, with ties and steel rails;
 - Establishment of bridges and railway sidings at several locations;
 - The delivery, operation, maintenance and eventual abandonment of locomotives, ore rail cars, fuel cars and freight cars;
 - Development of bungalows/sheds containing power switching systems along the rail line; and
 - Installation of communication towers along the rail line (estimated as up to 15 structures).

The addition of the northern rail component to the Phase 2 Proposal would also require the following changes to the existing infrastructure and the infrastructure as originally proposed under the Phase 2 Proposal:

- Mine Site: Construction and operation of a railway track and ore loading station to support the operation of the northern rail component;
- Tote Road: Upgrades and improvements to the existing Tote Road to facilitate its use for both the transportation of ore and the movement of construction materials for the railway and associated development of quarry and borrow sites to support these increased activities;
- Tote Road: Increased traffic on the Tote Road during the construction of the northern rail component; and
- Milne Port Site: Development of a railway car unloading system, rail yard and railway maintenance facility at the existing Milne Port site.

The Project Update indicates that these changes to the Phase 2 Proposal are anticipated to result in changes to the economic effects and benefits associated with the revised Phase 2 Proposal;

largely to reflect increases to the construction work force and business opportunities resulting from the construction of the northern rail component. Baffinland also identified a number of projected environmental benefits associated with ultimately replacing the use of haul trucks to transport ore along the Tote Road, including reduction in dust, noise, disturbance and potential mortality to wildlife and safety.

THE BOARD'S DETERMINATION

While the NIRB is mindful that it is in the interests of all participants that Nunavut's integrated regulatory process should function in as efficient and timely manner as possible, the Board also notes that thorough project assessments and meaningful participation by parties can only be achieved when a complete and accurate picture of the proposed project under assessment is available. While the Board recognizes that circumstances often dictate that project proponents will only be able to proceed with major development projects in phases, the regulatory process applicable to modifications to previously approved projects must be sufficiently robust to ensure that full and fair assessment of subsequent phases of a development are conducted with the same rigor as that required for the first phase of the original development.

Further, in this case, and as indicated in past assessments and expressly recognized under s. 86 of the *Nunavut Planning and Project Assessment Act (NuPPAA)*, it is a fundamental principle that meaningful assessment of a potential development proposal cannot take place unless and until there are sufficient details provided to accurately delineate the scope of the development proposal under consideration. Although the Board notes that in the Project Update, Baffinland characterizes the proposed addition of the northern rail component and changes to proposed project shipping to only be "refinements" to the original proposal that should not constitute a significant modification to the Phase 2 Proposal, the Board does not agree. The Board finds that the construction of a new 110 km rail line not previously subject to a conformity determination by the Nunavut Planning Commission and not previously assessed by the NIRB is not a minor addition to the scope of the Phase 2 Proposal as originally received. Further, the Board has determined that the scale and scope of the addition to the Phase 2 Proposal and the associated revisions to existing infrastructure are significant.

Although the Board recognizes that with the alignment of the proposed northern rail component following the alignment of the existing Tote Road to the extent feasible, Baffinland may reduce the potential for impact from the northern rail component in comparison to the effects that would be expected during the construction of a railway through a previously undeveloped area, (as was the case for the southern rail component previously approved by the NIRB following the assessment of the original Mary River Project), this does not mean that the change to the scope of the original Phase 2 Proposal required to add the northern rail component is an insignificant modification. The Board also notes that the addition of the northern rail component to the Phase 2 Proposal will also mean that additional regulatory participants would need to become involved in the NIRB's assessment of the Phase 2 Proposal as modified, specifically the northern rail component is expected to require the involvement of the Canadian Transportation Agency and additional Transport Canada representatives.

Consequently, the NIRB has determined that the changes to the Phase 2 Proposal as set out in the Project Update constitute a significant modification to the original Phase 2 Proposal.

Having determined that Baffinland's proposed changes to the Phase 2 Proposal constitute a significant modification to the original scope of the Phase 2 Project, the NIRB cannot proceed to the next stages in the Board's assessment of the Phase 2 Proposal as Baffinland proposes to modify it. In the NIRB's view, the combined effect of the NIRB determining that the Phase 2 Proposal has been significantly modified and the transition provisions of *NuPPAA* (s. 235(1) and (2)) will result in *NuPPAA* now being applicable to the significantly modified Phase 2 Proposal. Therefore, Baffinland is advised to submit notice of the significant modifications to the Phase 2 Project Proposal now proposed by Baffinland and described in the Project Update to the Nunavut Planning Commission as required under *NuPPAA*, s. 141. Once the land use planning provisions of the *Nunavut Agreement* and the *NuPPAA* have been satisfied for the modified proposal, the NIRB will be ready to initiate its impact assessment process for the modified Phase 2 Proposal accordingly.

This letter has been copied to the Nunavut Planning Commission to ensure the NPC is aware of the Board's determination and the NIRB's suggested next steps. In providing this guidance, the NIRB recognizes that it may appear to some parties that the requirement for Baffinland to submit an updated project proposal to the NPC is an indication that Baffinland is required to completely re-start the regulatory process for the modified Phase 2 Proposal; the NIRB emphasizes that it is committed to ensuring that all information received during the Board's consideration of the original Phase 2 Proposal to date will be brought forward into any future assessment of the modified Phase 2 Proposal. This approach is expressly required of the NIRB under s. 141(3) of *NuPPAA*, which sets out that: "*the person or body exercising powers or performing duties or functions under this Part in respect of the modified project must consider, and may rely on, any assessment activities carried out under this Part in respect of the original project*" [underlining added].

As with the NIRB's previous assessments in relation to the Mary River Project, the Board also remains committed to fulfilling its mandate to conduct a thorough, efficient and timely assessment of proposed works, activities and undertakings as required under the *Nunavut Agreement* and the legislative requirements of the *NuPPAA*. To that end, the NIRB will work with the NPC, Baffinland, regulators and other interested parties to: co-ordinate the NIRB's assessment requirements with other regulatory processes; ensure that information submitted previously is fully and properly considered; and build upon the previous assessments associated with the Mary River Project as appropriate.

Please direct any questions regarding the Board's determination, guidance or proposed next steps to the Board'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: The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs
Andrew Nakashook, Chairperson, Nunavut Planning Commission
Mary River Distribution List