



NIRB File No.: 08MN053

NWB File No.: 2AM-MRY1325- Amendment No. 1/G1

November 14, 2017

Todd Burlingame
Vice-President, Sustainable Development
Baffinland Iron Mines Corporation
2275 Upper Middle Road East
Oakville, ON L6H 0C3

Sent via email: todd.burlingame@baffinland.com

Re: Mary River Project – Tote Road, Camp, and Fuel Upgrade Request for Project Certificate No. 005 Review

Dear Todd Burlingame:

On November 8, 2017 the Nunavut Impact Review Board (NIRB) received Baffinland Iron Mines Corporation's (Baffinland or the Proponent) "Tote Road, Camp, and Fuel Upgrade" project proposal (the Upgrade Project Proposal) which outlined proposed modifications to the approved Mary River Project, with an accompanying request for conformation that the proposed project modifications are consistent with the scope of the Mary River Project and associated Early Revenue Phase as previously assessed by the NIRB and approved through Project Certificate No. 005 (NIRB File No. 08MN053). Baffinland has identified that the proposed project modifications require authorization by the Nunavut Water Board (NWB) through the existing Type "A" Water Licence for the Project (2AM-MRY1325); therefore, the NWB also requires confirmation from the NIRB that the scope of proposed activities has been assessed and approved to proceed by the NIRB.

All materials related to this request can be obtained from the NIRB's online public registry at www.nirb.ca by using any of the following search criteria:

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

As previously indicated to Baffinland in the NIRB's October 26, 2017 correspondence and in direct conversations between NIRB staff and Baffinland representatives, any further submissions by Baffinland regarding proposed modifications to the Mary River project are required to clearly

demonstrate that the proposed activities are separate and distinct from the scope of work associated with Baffinland's previously submitted Phase 2 Development Proposal, which is currently being considered by the Nunavut Planning Commission (NPC). Pursuant to Subsection 87(2) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 13 (*NuPPAA*), the Board will be unable to consider or assess activities included within the scope of the Phase 2 Development Proposal for the Mary River Project until the NPC's process has concluded and NPC has either granted a variance, amendment or a positive conformity determination under the North Baffin Regional Land Use Plan that would allow the Phase 2 Development Proposal to be referred back to the NIRB for assessment.

Following receipt of the Upgrade Project Proposal, the NIRB undertook a cursory review of the associated documentation and quickly determined that Baffinland has not demonstrated that the activities proposed in the Upgrade Project Proposal are separate and distinct from the Phase 2 Development Proposal. The Board notes that this Upgrade Project Proposal is also supported by references to consultant reports developed to support the Phase 2 Development Proposal, making the separation of the proposed activities more uncertain and creating considerable difficulty for the NIRB and reviewing parties to delineate the scope of each assessment. Further, some of the proposed activities including twinning of sections of the existing Tote Road appear to also be beyond the scope of the approved project as previously assessed by the NIRB during the Review of the original Mary River Project¹ and the NIRB's reconsideration of Project Certificate No. 005 for the Early Revenue Phase Project Proposal². Such activities would therefore be considered significant modifications to the approved Project and would, therefore, require further assessment by the NIRB prior to approval by associated authorizing agencies (which may include the NWB, Indigenous and Northern Affairs Canada, the Qikiqtani Inuit Association, and Fisheries and Oceans Canada).

At present, the NIRB is unable to confirm that the proposed project modifications are consistent with the scope of the Mary River Project and associated Early Revenue Phase as previously assessed by the NIRB and approved through Project Certificate No. 005 as amended. The NIRB recommends that Baffinland modify and resubmit its proposal when it is able to demonstrate that the proposed modifications to the Mary River Project included in the Upgrade Project Proposal are independent of and not integrally linked to the Phase 2 Development Proposal under consideration by the NPC. Also, for those proposed works not previously assessed by the NIRB, sufficient supporting information will be required to support an assessment of the potential ecosystemic and socio-economic impacts by the NIRB, and also to support the NIRB's determination regarding whether or not a formal reconsideration of the terms and conditions of Project Certificate No. 005 is required.

The NIRB notes that as Baffinland has proposed various changes to the project since 2012, it has submitted multiple applications proposing modifications to the approved Mary River Project to the NPC, the NWB, and the NIRB sometimes individually and sometimes simultaneously.

¹ See the scope of the original Mary River Project Proposal as described in NIRB File No. 08MN053, Final Hearing Report for the Mary River Project, Baffinland Iron Mines Corporation, September 14, 2012, Section 2.2 Project Description, at pp. 35-38.

² See the scope of the Early Revenue Phase Project Proposal as described in NIRB File No. 08MN053, Public Hearing Report for the Mary River Project: Early Revenue Phase Proposal, Baffinland Iron Mines Corporation, March 17, 2014, Section 2.2 Project Description, at pp. 38-42.

Taking varied approaches with numerous applications to multiple regulators may create unnecessary difficulty and confusion for regulators, reviewers and the proponent alike, as parties find it challenging to properly delineate the scope, regulatory path and timelines for the individual applications and to understand how these applications may be affected by subsequent modification requests. In the interests of ensuring all parties have an adequate understanding of the precise scope of activities being considered, as well as being mindful of activities that are separate and distinct from each other, the NIRB has provided additional explanation and direction below regarding an improved process for seeking approval for modifications to approved projects that will assist regulators and reviewing parties moving forward.

PROCESS FOR SEEKING APPROVAL FOR MODIFICATIONS TO APPROVED PROJECTS

Once approved to proceed following consideration by the NPC, NIRB, and NWB (collectively “the Boards”) through Nunavut’s integrated regulatory system, it is anticipated that major development projects may require modifications to their associated licences, permits, and approvals from time to time owing to unforeseen circumstances. Some proponents further pursue a phased development approach, seeking approval of incremental developments through successive applications to the Boards (e.g., Doris North Gold Mine and the Phase 2 Hope Bay Belt proposals). When not carefully planned and executed by the proponent in consultation with the Boards, submission of multiple applications simultaneously or successively to one or more of the Boards can create unnecessary confusion, overlap, and difficulty for all involved.

Where a proponent has determined that a modification to project works or activities is required due to unforeseen circumstances or as part of the phased development of a previously approved Project, the NIRB recommends the following:

1. The proponent consults the significance criteria under subsection 90 of the *NuPPAA* and the proposed scope of activities to be undertaken and self-assesses whether the proposed modification constitutes a “significant modification” to the project as previously considered by the NPC for conformity, assessed by the NIRB, and/or licenced by the NWB;
2. If the proponent is unsure as to whether the modification is a significant modification, the proponent should provide a sufficiently detailed project proposal document to the NPC with a direct request for the NPC to provide guidance regarding whether the modification constitutes a significant modification;
3. If the proponent and/or the NPC identify that the modification constitutes a significant modification, the proponent should submit the modification project proposal to the NPC for consideration. In addition, the proponent is encouraged to:
 - a. At the time of submission of the modification project proposal to the NPC, provide the NIRB with the appropriate supporting project proposal documentation required to assess the modification request;³ and provide the NWB with the water

³Project proposal materials submitted to the NIRB should clearly link back to the original Environmental Impact Statement submitted for the approved project, and the ongoing monitoring program for the approved project as appropriate, and should describe the justification for the proposed modification in sufficient detail to be understood and assessed as necessary.

licence amendment application materials required to consider any requested amendments to the water licence.

- b. NOTE: the NIRB and the NWB are not able to commence formal processing of a proponent's modification request until the NPC's land use planning requirements have been satisfied, and in the case of the NWB, the NIRB's assessment requirements associated with the proponent's modification request have been completed. However, early engagement with the NIRB and NWB is encouraged to ensure that consultation regarding the scope and content of the proposed modifications is undertaken in the early stages of the regulatory process.
 - c. When a proponent's significant modification request has met the NPC's land use planning requirements and the NPC issues a positive conformity determination where required, the NIRB will then undertake any assessment of the Project that may be required.
 - d. If assessment is not required or upon the NIRB issuing a positive decision that the project can proceed to the permitting stage, the NWB can then consider any water licence amendments associated with the modification request.
4. If the proponent's self-assessment and/or NPC guidance conclude that the modification request does not constitute a significant modification, a proponent can submit the application materials supporting the modification request to the appropriate permitting agencies (such as a water licence amendment application to the NWB). A proponent's submission to permitting agencies should also include, for the permitting agencies' consideration, the materials supporting the proponent's self-assessment or the NPC's confirmation that the modification request is not a significant modification.
- a. The proponent is further encouraged to provide the NIRB with copy of its application materials for information only, to support the Board's ongoing monitoring of the approved project.

CONCLUSION

Should Baffinland have any questions or require clarification regarding the NIRB's handling of the Upgrade Project Proposal specifically, or the NIRB's proposed approach to modification requests generally, please contact me directly at (867) 983-4608 or via e-mail at rbarry@nirb.ca.

Sincerely,



Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Megan Lord-Hoyle, Baffinland Iron Mines Corporation
Sharon Ehaloak, Nunavut Planning Commission
Brian Aglukark, Nunavut Planning Commission
Stephanie Autut, Nunavut Water Board
David Hohnstein, Nunavut Water Board
Sean Joseph, Nunavut Water Board
Mary River Distribution List