



SCREENING DECISION REPORT NIRB FILE NO.: 07CA070

August 22, 2007

Honourable Chuck Strahl
Minister of Indian & Northern Affairs Canada
Gatineau, QC

E-Mail: Strahl.C@parl.gc.ca

Re: Screening Decision for Baffinland Iron Mines Corporation's "Amendment to Geotechnical and Exploration Program "Project Proposal"

Dear Honorable Minister:

The primary objectives of the Nunavut Land Claims Agreement are set out in section 12.2.5 of the Land Claims Agreement. This section reads:

In carrying out its functions, the primary objectives of the Nunavut Impact Review Board (NIRB or Board) shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of the residents of Canada outside the Nunavut Settlement Area.

Section 12.4.4 of the Nunavut Land Claim Agreement (NLCA) states:

Upon receipt of a project proposal, NIRB shall screen the proposal and indicate to the Minister in writing that:

- a) the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5;
- b) the proposal requires review under Part 5 or 6; NIRB shall identify particular issues or concerns which should be considered in such a review;
- c) the proposal is insufficiently developed to permit proper screening, and should be returned to the proponent for clarification; or
- d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.

NIRB Assessment and Decision

After a thorough assessment of all material provided to the Board (please see Procedural History and Project Activities in **Appendix A**), in accordance with the principles identified within Section 12.4.2 of the NLCA, the decision of the Board as per Section 12.4.4 of the NLCA is:

12.4.4 (a): the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5.

Recommended Terms and Conditions, pursuant to Section 12.4.4(a) of the NLCA

The Board is recommending the following or similar project-specific terms and conditions be imposed upon the Proponent through all relevant legislation:

1. Baffinland Iron Mines Corporation (the Proponent) shall forward copies of all amended permits obtained and new authorizations required for this amendment to the Nunavut Impact Review Board (NIRB or Board) prior to the commencement of the project.
2. The Proponent shall conduct project activities in accordance with all commitments stated in all documents provided to the NIRB, Indian and Northern Affairs Canada (INAC), Nunavut Water Board (NWB) and other government agencies in this application and in the application for its Geotechnical and Exploration Program.
3. The Proponent is required to consult and submit a formal application as indicated by Transport Canada (TC) for Navigable Waters Protection Program (NWPP) with detailed drawings / plans and activities for applicable authorization.
4. The Proponent is required that a revised Spill Contingency Plan be submitted to NIRB, Environment Canada (EC), INAC, Government of Nunavut – Department of Environment (GN-DOE) and NWB along with 2007 Annual Report. It should include:
 - Detailed site maps of various fuel caches in association with nearby facilities.
 - The issues raised by interviewers during the Water License Amendment application with NWB.
 - The wildlife protection measures regarding potential spills in marine areas during shipping, in particular implementing specific mitigation measures to keep birds out of any contaminated area and list what measures would be taken if birds do come in contact with the spill.
5. The Proponent is required to submit a revised Wildlife Management and Monitoring Plan (WMMP) to NIRB, GN-DOE and INAC along with 2007 Annual Report for its Geotechnical and Exploration Program. The following perspectives should be addressed and included in the revised WMMP:
 - The mitigation and management measures specified in the revised WMMP should be detailed and site-specific including the proposed new activities and project components.
 - Revised WMMP should reflect monitoring results in 2007 field operation and any additional impact analysis based on 2007 operation season.
 - The proponent should demonstrate how the Caribou Protection Measures were applied in 2007. It is not clear in the current WMMP, how control and impact sites were chosen and where they are located with respect to each other.
 - An explanation for choosing control and impact sites is required, and clear maps of the control and impact areas should be included in the WMMP.

6. The Proponent shall verify its migratory bird survey techniques to ensure that the methodologies used are appropriate and comparable to surveys done elsewhere in the region by contacting and consulting the Canadian Wildlife Service (CWS) of Environment Canada: Myra Robertson (Environmental Assessment Coordinator, Canadian Wildlife Service, Environment Canada, Suite 301, 5204-50th Avenue, Yellowknife, NT X1A 1E2, Ph: (867) 669.4763 or myra.robertson@ec.gc.ca).
7. The Proponent is required to conduct stack testing to ensure compliance with the CWSs and report to NIRB, GN-DOE and INAC for its new incinerator employed.
8. The Proponent shall include in its Annual Report for Geotechnical and Exploration Program all the proposing project activities and components described in this application. In addition to the requirements directed by NIRB in its Screening Decision Report dated March 26, 2007 for 07EN004, an accumulative effects assessment should be included in the Annual Report with respect to the additive and cumulative effects by the two subprojects and the proposed expansions of the one subproject (i.e., the geotechnical and exploration project) comprising the larger Mary River project.
9. The Proponent shall respond to the comments and concerns raised by the CLARC members directly as part of community consultation program and submit to NIRB, Qikiqtani Inuit Association and other parties associated with this project any results of such consultation.

OTHER NIRB CONCERNS AND RECOMMENDATIONS

Indian and Northern Affairs Canada (INAC)

- INAC impose strict mitigation measures, conditions and monitoring requirements, pursuant to the Federal Land Use Permit, which require Baffinland to respect the ecosystem in the project area. These mitigation measures, conditions and monitoring requirements should be in regard to:
 - Wildlife and habitats protection.
 - Routings, timing and locations of airborne geophysics.
 - Use, Storage, Handling and Disposal of Chemical or Toxic Material.
 - Petroleum Fuel Storage.
 - Matters Not Consistent with the Regulations.
- INAC should also consider the importance of conducting regular Land Use Inspections, pursuant to the authority of the Federal Land Use Permit, while the project is in operation. The Land Use Inspections should be focused on ensuring the Proponent is in compliance with the conditions imposed through the Federal Land Use Permit.

The Government of Nunavut Department of Environment (GN-DOE)

- The GN-DOE should assist the Proponent with the WMMP revisions necessary regarding the Proponent's WMMP, including:
 - Conduction of caribou collaring program and the peregrine falcon research project initiated by GN.
 - Developing and clarifying criteria, which apply when the cessation of all activities is required due to the presence of the caribou in project areas.
 - Recommend mitigation measures.
 - Survey and recording protocols are conducted pertain to the submitted Wildlife Mitigation Plan.

Regulatory Requirements

The Proponent will be advised, should the project proceed, that the following legislation may apply to the project:

1. Section 36(3) of the *Fisheries Act* (<http://laws.justice.gc.ca/en/showtdm/cs/F-14///en>) which states that no person shall deposit or permit the deposit of a deleterious substance in any type in water frequented by fish or in any place under any conditions where the deleterious substance may enter such a water body.
2. The *Migratory Birds Convention Act* and *Migratory Birds Regulations* which state that no person disturb or destroy the nests or eggs of migratory birds, and that no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds (<http://laws.justice.gc.ca/en/showtdm/cs/M-7.01>)
3. *The Species at Risk Act* (<http://laws.justice.gc.ca/en/showtdm/cs/S-15.3>). Attached in **Appendix B** is a list of Species at Risk in Nunavut. The Proponent should consult the Species at Risk Public Registry (<http://www.sararegistry.gc.ca/>) to identify any Species at Risk within the project location. Further, the Proponent shall develop monitoring plans for each relevant Species at Risk in accordance with any applicable status reports, recovery strategies, action plans, and management plans posted on the Species at Risk Public Registry and in consultation with the Government Organization with Primary Management Responsibility. Monitoring plans should record the locations and frequency of observing species of special concern and note any actions taken to avoid contact or cause disturbance to the species, its residence, or its critical habitat.
4. The *Nunavut Act* (<http://laws.justice.gc.ca/en/showtdm/cs/N-28.6>) which requires that no person alter or disturb any archaeological or palaeontological sites in Nunavut unless permission is first granted through the permitting process. If any archaeological or palaeontological sites are found they should remain undisturbed and their location should be reported to the Government of Nunavut Department of Culture, Language, Elders and Youth. The Proponent must comply with the proposed terms and conditions listed in the attached **Appendix C**.
5. The *Transportation of Dangerous Goods Regulations*, *Transportation of Dangerous Goods Act* (<http://www.tc.gc.ca/tdg/menu.htm>), and the *Environmental Protection Act* (<http://laws.justice.gc.ca/en/C-15.31/text.html>) which presents the requirements for the handling, storing, managing and transportation of dangerous goods, including hazardous wastes, fuel and contaminated material. The Proponent must ensure that proper shipping documents accompany all movements of dangerous goods. The Proponent must register with GN-DOE by contacting Robert Eno at 867-975-7748 or reno@gov.nu.ca.

Validity of Land Claims Agreement

Section 2.12.2

Where there is any inconsistency or conflict between any federal, territorial and local government laws, and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict.

Dated February 22, 2008 at Sanikiluaq, NU.



Lucassie Arragutainaq, A/Chair

APPENDIX A

Procedural History and Project Activities

Procedural History

On December 6, 2007 the Nunavut Impact Review Board (NIRB or Board) was forwarded an application by Indian and Northern Affairs Canada (INAC) from Baffinland Iron Mines Corporation (Baffinland) to amend its INAC Land Use Permit N2006C0036 to include additional activities (listed below). The original Geotechnical and Exploration project proposal (NIRB No.: 07EN004) associated with this Land Use Permit was screened by NIRB in accordance with Article 12, Part 4 of the Nunavut Land Claims Agreement and given a 12.4.4(a) decision on March 26, 2007.

After review of the information provided by Baffinland related to the proposed amendment, the NIRB determined that these project activities were **not** included in the Geotechnical and Exploration project proposal (NIRB No.: 07EN004).

As per section 12.4.3(a) of the Nunavut Land Claims Agreement:

Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

(a) such component or activity was not part of the original project proposal...

By the statement outlined above, the NIRB determined it was necessary to proceed to screen the amendment activities. Therefore, The NIRB assigned this project proposal a new file number **07CA070** and commenced a Part 4 screening.

On December 11, 2007 the NIRB distributed the amendment application to interested Federal and Territorial Agencies, as well as municipalities most affected by this project for comments by December 21, 2007.

On December 19, 2007 the NIRB received a request from Qikiqtani Inuit Association (QIA) to extend its commenting period to allow its Community Land and Resource Committee (CLARC) members to comment by January 31, 2008. Accordingly the NIRB requested an extension with the INAC Minister and notified the related parties to accommodate commenting period. On January 14, 2008 another request letter from QIA was received by the NIRB requesting a further extension for its commenting deadline from January 31 to February 13, 2008.

On or before February 13, 2008 the NIRB received comments from the following interested Parties:

- Environment Canada (EC);
- Transport Canada (TC);
- The Government of Nunavut, Department of Environment (GN-DOE);
- QIA (including the CLARC members from Hamlet of Arctic Bay; Clyde River and Igloolik.)

Project Activities

The proposed project activities include:

- Extension of the existing Land Use Permit to December 31, 2010

- Establishment of a new temporary tent camp (Rail Camp) for approximately 40 people part way along a potential future railway alignment
- Expansion of the originally identified 8-12 person temporary tent camp at a future potential port site at Steensby Inlet to an approximately 40 person temporary tent or trailer camp in 2008
- Addition of annual sealift to Steensby Inlet for materials and supplies required for camp and drilling operations
- Increase in the number of drills for above-related program work from seven (7) to up to ten (10)
- Alterations to numbers of drill holes and test pits for above-related program

APPENDIX B

Species at Risk in Nunavut

This list includes species listed on one of the Schedules of SARA (*Species at Risk Act*) and under consideration for listing on Schedule 1 of SARA. These species have been designated as at risk by COSEWIC (Committee on the Status of Endangered Wildlife in Canada). This list may not include all species identified as at risk by the Territorial Government.

- Schedule 1 is the official legal list of Species at Risk for SARA. SARA applies to all species on Schedule 1. The term “listed” species refers to species on Schedule 1.
- Schedule 2 and 3 of SARA identify species that were designated at risk by the COSEWIC prior to October 1999 and must be reassessed using revised criteria before they can be considered for addition to Schedule 1.
- Some species identified at risk by COSEWIC are “pending” addition to Schedule 1 of SARA. These species are under consideration for addition to Schedule 1, subject to further consultation or assessment.

Schedules of SARA are amended on a regular basis so it is important to periodically check the SARA registry (www.sararegistry.gc.ca) to get the current status of a species.

Updated: January 3, 2007

Species at Risk	COSEWIC Designation	Schedule of SARA	Government Organization with Lead Management Responsibility ¹
Eskimo Curlew	Endangered	Schedule 1	EC
Ivory Gull	Endangered ²	Schedule 1	EC
Peregrine Falcon (subspecies anatum)	Threatened	Schedule 1	Government of Nunavut
Ross's Gull	Threatened	Schedule 1	EC
Harlequin Duck (Eastern population)	Special Concern	Schedule 1	EC
Felt-leaf Willow	Special Concern	Schedule 1	Government of Nunavut
Peregrine Falcon (subspecies tundrius)	Special Concern	Schedule 3	Government of Nunavut
Short-eared Owl	Special Concern	Schedule 3	Government of Nunavut
Fourhorn Sculpin	Special Concern	Schedule 3	DFO
Peary Caribou	Endangered ³	Pending	Government of Nunavut
Beluga Whale (Eastern Hudson Bay population)	Endangered	Pending	DFO
Beluga Whale (Cumberland Sound population)	Threatened	Pending	DFO

Beluga Whale (Western Hudson Bay population)	Special Concern	Pending	DFO
Beluga Whale (Eastern High Arctic – Baffin Bay population)	Special Concern	Pending	DFO
Bowhead Whale (Hudson Bay-Foxe Basin population)	Threatened ⁴	Pending	DFO
Bowhead Whale (Davis Strait-Baffin Bay population)	Threatened ⁴	Pending	DFO
Porsild's Bryum	Threatened	Pending	Government of Nunavut
Atlantic Walrus	Special Concern	Pending	DFO
Narwhal	Special Concern	Pending	DFO
Rusty Blackbird	Special Concern	Pending	Government of Nunavut
Barren-ground Caribou (Dolphin and Union population)	Special Concern ³	Pending	Government of Nunavut
Grizzly Bear	Special Concern	Pending	Government of Nunavut
Polar Bear	Special Concern	Pending	Government of Nunavut
Wolverine (Western Population)	Special Concern	Pending	Government of Nunavut

¹ Environment Canada has a national role to play in the conservation and recovery of Species at Risk in Canada, as well as responsibility for management of birds described in the Migratory Birds Convention Act (MBCA). Day-to-day management of terrestrial species not covered in the MBCA is the responsibility of the Territorial Government. Populations that exist in National Parks are also managed under the authority of the Parks Canada Agency. EC = Environment Canada, DFO = Department of Fisheries and Oceans

² Designated as Endangered by COSEWIC in April 2006 and it is expected that the category of concern in SARA will also be changed from Special Concern to Endangered.

³ Peary Caribou was split into three separate populations in 1991: Banks Island (Endangered), High Arctic (Endangered) and Low Arctic (Threatened) populations. The Low Arctic population also included the Barren-ground Caribou - Dolphin and Union population. In May 2004 all three population designations were de-activated, and the Peary Caribou, *Rangifer tarandus pearyi*, was assessed separately from the Barren-ground Caribou (Dolphin and Union population), *Rangifer tarandus groenlandicus*. The subspecies *pearyi* is composed of a portion of the former "Low Arctic population" and all of the former "High Arctic" and "Banks Island" populations, and it was designated Endangered in May 2004. Although SARA lists Peary Caribou on Schedule 2 as three separate populations, the most current designation is the COSEWIC designation of the subspecies *pearyi* as Endangered.

⁴ The "Eastern and Western Arctic populations" of Bowhead Whale were given a single designation of Endangered in April 1980 by COSEWIC. These were split into two populations to allow separate designations in April 1986. The Eastern population was not re-evaluated in April 1986, but retained the Endangered status of the original "Eastern and Western Arctic populations". The Eastern Arctic population was further split into two populations (Hudson Bay-Foxe Basin population and Davis Strait-Baffin Bay population) in May 2005, and both these populations were designated as Threatened. Both these populations are under consideration for addition to Schedule 1. Although SARA lists the Eastern Arctic population as Endangered (Schedule 2), the most current designation is the COSEWIC designations of the Hudson Bay-Foxe Basin and Davis Strait-Baffin Bay populations as Threatened.

APPENDIX C

Government of Nunavut – Department of Culture, Language, Elders and Youth Standard Terms and Conditions



BACKGROUND

Archaeology

As stated in Article 33 of the Nunavut Land Claims Agreement:

The archaeological record of the Inuit of Nunavut is a record of Inuit use and occupancy of lands and resources through time. The evidence associated with their use and occupancy represents a cultural, historical and ethnographic heritage of Inuit society and, as such, Government recognizes that Inuit have a special relationship with such evidence, which shall be expressed in terms of special rights and responsibilities. [33.2.1]

The archaeological record of Nunavut is of spiritual, cultural, religious and educational importance to Inuit. Accordingly, the identification, protection and conservation of archaeological sites and specimens and the interpretation of the archaeological record is of primary importance to Inuit and their involvement is both desirable and necessary. [33.2.2]

In recognition of the cultural, spiritual and religious importance of certain areas in Nunavut to Inuit, Inuit have special rights and interests in these areas as defined by Article 33 of the Nunavut Land Claims Agreement. [33.2.5]

Palaeontology

Under the Nunavut Act¹, the federal government can make regulations for the protection, care and preservation of palaeontological sites and specimens in Nunavut. Under the *Nunavut Archaeological and Palaeontological Sites Regulations*², it is illegal to alter or disturb any palaeontological site in Nunavut unless permission is first granted through the permitting process.

Definitions

As defined in the *Nunavut Archaeological and Palaeontological Sites Regulations*, the following definitions apply:

“archaeological artifact” means any tangible evidence of human activity that is more than 50 years old and in respect of which an unbroken chain of possession or regular pattern of usage cannot be demonstrated, and includes a Denesuline archaeological specimen referred to in section 40.4.9 of the Nunavut Land Claims Agreement.

“palaeontological site” means a site where a fossil is found.

“fossil” includes:

- (a) natural casts
- (b) preserved tracks, coprolites and plant remains; and
- (c) the preserved shells and exoskeletons of invertebrates and the eggs, teeth and bones of vertebrates.

Terms and Conditions

- 1) The permittee shall not operate any vehicle over a known or suspected archaeological or palaeontological site.
- 2) The permittee shall not remove, disturb, or displace any archaeological artifact or site, or any fossil or palaeontological site.
- 3) The permittee shall immediately contact the Department of Culture, Language, Elders and Youth (867) 934-2046 or (867) 975-5500 or 1 (866) 934-2035 should an archaeological site or specimen, or a palaeontological site or fossil be encountered or disturbed by any land use activity.
- 4) The permittee shall immediately cease any activity that disturbs an archaeological or palaeontological site encountered during the course of a land use operation, until permitted to proceed with the authorization of the Department of Culture, Language, Elders and Youth, Government of Nunavut.
- 5) The permittee shall follow the direction of the Department of Culture, Language, Elders and Youth and DIAND in restoring disturbed archaeological or palaeontological sites to an acceptable condition.
- 6) The permittee shall provide all information requested by the Department of Culture, Language, Elders and Youth concerning all archaeological sites or artifacts and all palaeontological sites and fossils encountered in the course of any land use activity.
- 7) The permittee shall make best efforts to ensure that all persons working under authority of the permit are aware of these conditions concerning archaeological sites and artifacts, and palaeontological sites and fossils.
- 8) The permittee shall avoid the known archaeological and/or palaeontological sites listed in Attachment 1.

9) The permittee shall have an archaeologist or palaeontologist perform the following functions, as required by the Department of Culture, Language, Elders and Youth:

- a) survey
- b) inventory and documentation of the archaeological or palaeontological resources of the land use area
- c) assessment of potential for damage to archaeological or palaeontological sites
- d) mitigation
- e) marking boundaries of archaeological or palaeontological sites
- f) site restoration

The Department of Culture, Language, Elders and Youth shall authorize by way of a Nunavut Archaeologist Permit or a Nunavut Palaeontologist Permit, all procedures subsumed under the above operations.