

N I R B

UNAVUT IMPACT REVIEW BOARD
Nunavutmi Kanogilivallianikot Eliittohaiyeoplotik Katimaviit

via fax (604) 692-4472 and regular mail

Dear Sirs:

- The Minister would like NIRB to request a revised project description from the proponent;
- The Minister needs the revised screening report to be able to make the correct referral to a Panel under section 12.4.7 of Article 12 of the Nunavut Land Claims Agreement (NLCA); and
- The Minister has made some preliminary observations based on the project description that NIRB initially received; his observations as per the April 10, 2003 letter, are that:

NIRB REPLY TO NAULT'S APRIL 10TH LETTER

in direction of re-supply routes to northern Canada has the potential to impact regions outside the Nunavut Territory."

We believe Minister Nault's April 10, 2003 request to NIRB was initially triggered by your letter of 27 November 2002 to Mr. Carl McLean, DIAND Manager of Land Administration, in which you described several changes to the scope and timing of your project. The dilemma created by your 27 November letter is that the implications of the proposed changes for the other matters addressed in the Project Description and supporting documents filed in March 2002 are imprecise. Depending on the nature and magnitude of those implications, the outcome of the screening that the Board conducted in 2002, and the Minister's response to it, might be altered.

By way of example, the magnitude and timing of the social and economic benefits that were described in some detail in the project description might have been an important factor in influencing the views of many persons and organizations that contributed to the screening. If, as a result of the changes or amendments to the project, those benefits disappear or are delayed significantly, the position of certain stakeholders (and those of the Board) on the nature and scope of the required review, may also be altered. Indeed, it is conceivable that the changes could alter the determination as to whether the Project should be reviewed under Part 5 or Part 6 of Article 12 of the NLCA. The Board believes that the Minister's April 10, 2003 letter gives you an opportunity to respond to the preliminary observations which, without any additional information, may suggest to him a Part 6 Review.

Minister Nault's April 10, 2003 letter was reviewed by the Board at its meeting of 13 April 2003 in Cambridge Bay. Pursuant to the Minister's request and NIRB's authority under NLCA Article 12, Part 4 to seek clarification from you, NIRB is asking that you do the following two things:

- (1) Submit a revised project proposal to NIRB that both clarifies concerns of the Minister and answers all of those matters that must be addressed in a project proposal (see NIRB's General Requirements for a Project Description). For example, it appears to the Board that Minister Nault (para 2, page 1, April 10, 2003 letter) needs to know the primary purpose and need for the project. The intent of this information prerequisite is also listed in the requirements of section 12.5.2 (a) of the NLCA. In making this specific reference to Part 5 Reviews, we do not prejudge the Minister's ultimate decision but point to the Part 5 requirements of proponents for projects of this type; and
- (2) Based on your new information, provide any clarification and updated information on feasibility studies and cost-benefit analyses that you might have. As you may already know, the matters that NIRB takes into account for Part 5 reviews at least, are outlined in 12.5.2 (1) - (j) and 12.5.5 of the NLCA. Also, late last year, NIRB identified several other matters that the Board takes into account for Part 5 Reviews and this included trans-boundary impacts. Again, we are not pre-judging your re-submission nor NIRB's or the Minister's outcome of the re-screening; we are giving you the

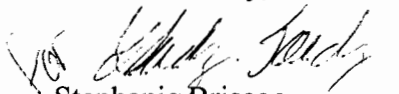
opportunity to file new information and to also respond to Minister Nault's 'preliminary observations' that may have inclined him towards a Part 6 Review.

In summary, the Board does not believe that a project proposal is amended by a listing of changes to the scope or timing of certain of its components; rather, the proponent's *view of the implications of those changes* for all of the matters that must be addressed, and reviewed, by the Board and interested parties, is also required.

Therefore, NIRB requests of you the submission of a revised project proposal that addresses the Minister's concerns and those of the Board as set out in this letter. The Board hopes that you will be able to do so **on or before May 12, 2003**. Following that, the Board will immediately circulate it for public comment, following which the Board will analyse all information and will re-submit the screening decision to Minister Nault—with or without modifications—pursuant to Section 12.4.4 of the NLCA. We believe that proceeding in the foregoing manner is not only a requirement of the NLCA, but that doing so will enhance the quality, integrity and certainty of the review process to the benefit of the proponent and of the people of Nunavut.

If you have any questions, please contact me at (867) 983-2593.

Yours Sincerely,


Stephanie Briscoe
Executive Director

cc: Distribution List

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

APR 10 2003

Ms. Elizabeth Copland
Chair
Nunavut Impact Review Board
PO Box 2379
CAMBRIDGE BAY NU X0E 0C0

Dear Ms. Copland:

This is in response to your letter of January 10, 2003, regarding the Bathurst Inlet Port and Road Project (project). I appreciate being provided with an update from the Nunavut Impact Review Board (NIRB) on the current status of the project and your offer to provide additional information to help facilitate my decision on the level of project review required.

In your letter, you have advised that the proponent formally notified the NIRB and the regulators in November 2002, of changes to certain components of the project. You have brought to my attention key sections of correspondence, on the part of the regulators, where the question of the NIRB re-screening the project description and any amended applications has been raised. You have also indicated that, in your opinion, the changes identified "will likely have the effect of reducing certain of the environmental impacts". Without a revised project description, I am unable to determine the potential implications of these changes on the screening decision issued by the NIRB on July 8, 2002. It is critical that I have the best information available on the project description, including the purpose and need for the project, its potential for significant adverse ecosystemic and socio-economic effects and public concern, to make my decision under section 12.4.7 of the Nunavut Land Claim Agreement. Thus, I would like the NIRB to request a revised project description from the proponent for the purposes of re-screening and submission to me.

I would like to take this opportunity to provide some preliminary observations to the NIRB on certain aspects of the project that will be integral to my decision. The project, as described, is large scale and clearly has the potential to have impacts that reach beyond the Nunavut Settlement Area. The construction of a deep sea port at Bathurst Inlet and the associated shipping of cargo, fuel and ultimately concentrate east or west to overseas smelters in newly established marine transportation corridors, raises

.../2

Canada

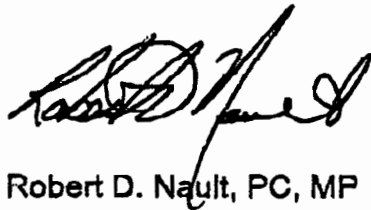
- 2 -

environmental concerns for the marine ecosystem as well as national and international questions regarding the jurisdiction and use of Arctic waters. The construction of an all-weather road to Contwoyto Lake has the potential to impact the Bathurst caribou herd and its habitat, which is a transboundary resource shared by the people of Nunavut and the Northwest Territories. Similarly, the change in direction of re-supply routes to northern Canada has the potential to impact regions outside the Nunavut Territory.

These issues alone suggest that the appropriate course of action may be to refer the project to the Minister of the Environment for a Part 6 panel review. A thorough consideration of these and other factors is necessary before I make my decision. I will await additional information from the NIRB in a revised screening decision report.

Thank you for your assistance.

Yours sincerely,



Robert D. Nault, PC, MP

c.c.: The Honourable David Anderson, PC, MP
The Honourable Robert G. Thibault, PC, MP