



Nunavut Impact Review Board (NIRB)
P.O. Box 1360
Cambridge Bay, NU
X0B 0C0
Attention: Elizabeth Copland, Chairperson

June 6, 2018

Re: Proposed approach to assessment of Mary River Modification Application – Production Increase, Fuel Storage and Milne Port Accommodations

First and foremost, we would like to thank your staff for taking the time to meet with us and QIA on May 31 and for discussing the Nunavut Impact Review Board (NIRB) processes for reconsidering the terms and conditions of project certificates.

We are writing at this time to provide you with Baffinland's proposed approach to the reconsideration of the terms and conditions of Project Certificate 005 in relation to the Mary River Modification Application – Production Increase, Fuel Storage and Milne Port Accommodations ('Production Increase Application'). We have taken into consideration regulatory and practice requirements within which the NIRB operates and provide below our proposed path forward.

Introduction

On April 23, 2018, Baffinland submitted the Production Increase Application to the Nunavut Planning Commission (NPC) and the Nunavut Impact Review Board (NIRB or the Board). On May 18, 2018 the NPC determined that the modification proposal conforms to the North Baffin Regional Land Use Plan (NBRLUP) and requires screening by the NIRB under section 12.4.3 of the *Nunavut Agreement*. On May 31, 2018 Baffinland representatives met with NIRB staff to discuss opportunities for undertaking the reconsideration of the Project Certificate in accordance with section 12.8.2 of the *Nunavut Agreement* and 112 of the *Nunavut Planning and Project Assessment Act* (NuPPA). The following is a summary of Baffinland's views on the subject accompanied by a proposed reconsideration process that respects the NIRB's mandate and procedures as well as the environmental limitations placed on Baffinland to carry out proposed activities within the 2018 open water season, i.e. by October 15th.

To deliver the permitted quantities of iron ore to markets for the Early Revenue Phase (ERP), Baffinland has developed a strong and committed workforce. As of 2017 this workforce demonstrated its growing efficiency by producing and delivering more iron ore to Milne Port than was initially planned for. At this point in time it is clear Baffinland can produce and deliver up to 6 Mtpa of iron ore through the established transportation corridor by increasing the frequency and capacity of existing activities and infrastructure, respectively. Unfortunately, without the flexibility in Project Certificate 005 to transfer more than 4.2 Mtpa of iron ore from the mine site to global markets, Baffinland now finds itself in a position of having to idle operations and reduce its workforce for a portion of each year starting in 2018.

The key terms and conditions of Project Certificate 005 that limit the shipping and road haulage of ore through the northern transportation corridor are 179 (a) and 179 (b), respectively. Each of these terms and

conditions has the ultimate objective to “manage likely project effects, while balancing the need for operational flexibility.” In section 3.4 of the project certificate it also states that “where the objective of a Project Certificate term or condition can be achieved through more efficient alternate means, the Proponent is encouraged to consult with the NIRB (and other parties as required) to seek acceptance of proposed alternatives.” It is Baffinland’s position that there are more efficient means of achieving the objectives of terms and conditions 179 (a) and 179 (b) than placing firm limits on quantities available for transportation. Arguably, a number of terms and conditions already exist that address the potential effects of ore transportation and relying on these to ensure Baffinland’s activities remain within established thresholds is both appropriate and respectful of the operational flexibility necessary to operate a bulk commodity operation in the Arctic.

Based on the above rationale, Baffinland is seeking a timely project certificate reconsideration process that focuses on modifications to the ore transportation limits in terms and conditions 179 (a) and 179 (b). The remainder of this letter provides the justification necessary for the NIRB to meaningfully consider and implement this request. As recommended under section 3.4 of Project Certificate 005, Baffinland has already consulted the Qikiqtani Inuit Association (QIA) to seek acceptance of the Production Increase Application and in doing so we have developed a mutual plan to address the public, which is detailed further in the subsequent section on public concern.

Discussion of Requirements

Section 112 (4) of NuPPAA clearly states that the Board has the flexibility to reconsider the terms and conditions of a project certificate “in the manner that it considers appropriate in the circumstances”. Baffinland is of the view that the reconsideration of the terms and conditions of Project Certificate 005 in a manner that is proportional to the potential environmental and socio economic effects of the Production Increase Application, is appropriate in these circumstances. With respect to the NIRB’s updated guidance on seeking approval for modifications to previously-approved projects, issued April 27, 2018, *Updated Guidance on Process for Seeking Approval for Modifications to Previously-Approved Projects*, Baffinland acknowledges its proposal is integrally linked to the original project as assessed by the NIRB and does require the reconsideration of several terms and conditions within the Project Certificate. However, the significance of the modification is not of a scale that warrants a comprehensive reconsideration process.

The proposal does not introduce new project components, fundamentally alter activities or introduce new environmental pathways. Instead, it builds on currently approved and assessed activities that are subject to comprehensive monitoring and management requirements developed through previous assessments and several years of reporting.

Consistent with section 146(2) of NuPPAA, the NIRB must consider previous assessments related to a modifying project, which Baffinland suggests should not only include the original FEIS (2012) and FEIS Addendum (2014) but the subsequent annual monitoring reports, comment exchanges, and direction provided by the Board. It should be noted that Baffinland is currently in the process of addressing comments on the 2017 Annual Report to the NIRB and these responses should be available by July 12, 2018, a timely factor that should not be considered in isolation of the reconsideration request.

Proposed Approach for Reconsideration of the Project Certificate

Baffinland understands the NIRB prioritizes procedural fairness, particularly in relation to the views and concerns of north Baffin communities, as well as the need to remain consistent with its approach towards the reconsideration of project certificates. Still, the frequency with which the NIRB is now processing project modifications is indicative of the challenges faced by the mining industry and especially for those operators choosing to do business in the Arctic.

The initial guidance provided by the NIRB in their April 27, 2018 communication is helpful, however, it is still unclear what spectrum of reconsideration intensity exists for significant modifications. For Baffinlands production increase proposal specifically, although it is understood a project certificate amendment is required given the integral linkages with the Mary River project and the wording of certain terms and conditions, the scale of modifications are simply not comparable to those of the Phase 2 project, which is referenced as the representative example.

A spectrum of review intensity must exist for project certificate reconsiderations and Baffinland proposes there is room to further streamline the process than has been followed by the NIRB to date. Written correspondence supported by public consultation should be considered where a modification proposal does not propose new activities, effect pathways, or significant public concern. Such a process should adequately satisfy the requirements of the NIRB to carry out public reviews while at the same time alleviate internal administrative burdens and the potential for community consultation fatigue. The advantage to industry is that it provides a responsible level of scrutiny to project growth while still allowing for operational flexibility. This is particularly justifiable in a jurisdiction where shipping windows are prohibitive and can be a source of significant delays.

Respecting the nature of activities proposed in the Production Increase Application, the thoroughness of the current application, and the mechanisms in place to monitor and manage project effects, Baffinland believes a reconsideration process focused on written correspondence and an optional public consultation component without a formal public hearing is capable of satisfying the Board's need to make a determination that is in keeping with its mandate. This includes the meaningful engagement of regulatory authorities, interveners, and the public, consistent with section 3.4 of Project Certificate 005.

The recommendation of the NIRB to the Minister is needed by August 31 in order to make the 2018 shipping component of the modified proposal possible. Baffinland understands the level of effort required by the NIRB to meet the proposed deadline as well as the legislated timelines afforded to them during a reconsideration process. The timeframe for the process steps to accommodate the possibility of 2018 activities described below are thus recognized to be wholly at the discretion of the NIRB, and only achievable through expeditious decision making.

Timeframe	Activities
June 15	Baffinland submits FEIS Addendum to the NIRB
June 22	NIRB internal conformity review of FEIS Addendum with Guidelines issued October 6, 2015 (most recent)
June 22	NIRB announces 12.8.2 reconsideration of Project Certificate 005, requests written submissions (21 days)
July 15	Written submissions received, NIRB requests responses from Baffinland
July 10 (week of)	NIRB public information session in Pond Inlet

July 30	Baffinland responds to written submissions (15 days)
August 30	NIRB issues Report
September	Minister's Decision
September	NIRB Amends Project Certificate

We believe the above noted review process conforms to the direction provided in the *Nunavut Agreement*, the NuPPAA and the intent NIRB's Rules of Procedure (September 3, 2009). Furthermore, this process accommodates Baffinland's need for operational flexibility as it endeavors to evolve and advance the Mary River project to the mutual benefit of North Baffin communities.

Inuit Engagement

Baffinland recognizes the importance and value of public input and the need for the public to have an opportunity to learn about proposed alterations to the project and to make comments to the NIRB regarding proposed changes. Reflecting this understanding, Baffinland carried out consultation activities in advance of submitting this application to the NPC, including meetings with community and QIA representatives in Pond Inlet on March 25. On March 15 and 22, 2018 Baffinland also shared information relating to the application with the Marine and Terrestrial Environmental Working Groups, of which both the MHTO and QIA are members.

Moving forward, Baffinland is working with the Qikiqtani Inuit Association (QIA) on this matter and have developed a comprehensive community engagement process to address marine and terrestrial mitigation and monitoring as well as potential Inuit benefits resulting from increasing Baffinland operations. This plan was presented to the Hamlet of Pond Inlet on June 4th for consideration and comment and while the details of this process are still being confirmed, there will be several additional visits to Pond Inlet to engage the community for related yet distinct purposes. The intent is for QIA to hold a series of meetings culminating with QIA outlining their views to the NIRB on July 30, 2018.

Baffinland and the QIA agree NIRB representation at the tentatively scheduled public meetings between July 10 and 13 in Pond Inlet would be valuable to the ongoing monitoring of the Mary River project and could also serve as an opportune time to inform the public about the NIRB reconsideration process for the Production Increase Application and solicit feedback for consideration by the Board in the development of its report. By proposing NIRB's participation in Baffinland's public meetings in Pond Inlet, Baffinland wants to be clear that it does not want to appear to fetter the NIRB's public consultation, however, efficiencies can be realized and consultation fatigue in North Baffin communities can be avoided if all Parties can coordinate efforts in this regard.

Information Requests

Baffinland understands that to make the proposed reconsideration process achievable the NIRB must be in receipt of all the information necessary to support the subsequent review by written correspondence. Recognizing that NIRB has been in receipt of the Production Increase Application since May 18, 2018, it is essential to the proposed timeline that we receive any necessary additional information requests and direction with respect to formatting as soon as possible. In this effort the NIRB is encouraged to consider in its information requests the extensive project assessment documentation already publically available and that their direction consider scope of proposed modifications within the context of the Guidelines issued in October 2015.

Relationship to Phase 2

We must also note that the NIRB is currently in receipt of two applications from the NPC pertaining to the Mary River project; the first received on May 18 for the Production Increase Application and the other received May 29 for Phase 2. Baffinland reiterates that although both proposals are integrally linked to the Mary River project, they are not integrally linked to one another in the same way. The modifications necessary for the production increase meet current operational constraints and are in no way intended to support the advancement of the Phase 2 proposal. Baffinland respects that this may be the first time the NIRB has been asked to reconsider a single Project Certificate for two separate purposes simultaneously but Baffinland trusts the NIRB's ability to carry out both processes in a separate, timely, and efficient manner.

Conclusion

Baffinland would like to reiterate its view that the process proposed in this letter is appropriate in the circumstances. The relatively minor nature of the changes to the terms and conditions of the Project Certificate, the fact that the public will have an opportunity to provide input into the process and the nature and extent of review and monitoring activities to date should all be seen as supporting the notion that the proposed approach is procedurally fair for the community, Baffinland and for the regulatory bodies that must make a determination on this matter.

Sincerely,



Megan Lord-Hoyle
Director, Sustainable Development

CC Grant Goddard, Baffinland Iron Mines Inc.
Ryan Barry, Nunavut Impact Review Board
Sharon Ehaloak, Nunavut Planning Commission
Stephanie Autut, Nunavut Water Board
Stephen Williamson-Bathory, Qikiqtani Inuit Association
Carson Gillis, Nunavut Tunngavik Inc.
Udlu Hanson, Government of Nunavut
Pauloosie Suvega, Government of Nunavut
Tracey McCaie, Indigenous-Crown Relations and Northern Affairs
Tineka Simmons, Canadian Northern Economic Development Agency
Laura Watkinson, Fisheries and Oceans Canada
General Account, Transport Canada
Rob Johnstone, Natural Resources Canada
Georgina Williston, Environment and Climate Change Canada