



**NIRB File No.: 08MN053**  
NWB File No.: 2AM-MRY1325  
QIA File No.: LUA-2008-008  
DFO File No.: 2008 MR

July 29, 2020

To: Mary River Distribution List

*Sent via email*

**Re: Process Update for the Upcoming NIRB Technical Meeting and Pre-hearing Conference for Baffinland Iron Mines Corp.'s "Phase 2 Development" Proposal**

Dear Parties:

On March 12, 2020 due to public health concerns related to the COVID-19 pandemic and restrictions on gatherings and travel, the Nunavut Impact Review Board (NIRB or Board) cancelled the in-person Technical Meeting, Community Roundtable and Pre-hearing Conference scheduled for March 16 - 25, 2020 in Iqaluit related to the Board's assessment of Baffinland Iron Mines Corp.'s (Baffinland or the Proponent) "Phase 2 Development" Proposal (the Proposal; NIRB File No. 08MN053). As a result of some parties expressing interest in proceeding with the technical discussions, an alternative option to hold just the technical meetings by teleconference April 28-May 8 was offered by the NIRB; however, as a result of the challenges to participation identified by parties, on April 24, 2020 the NIRB further postponed the meetings. In the April 24, 2020 notice to parties, the NIRB outlined the limitations that were required to change prior to the meetings being reconvened. The Board also encouraged Baffinland and individual parties to use the time between meetings to engage in party-to-party dialogue regarding outstanding technical issues and report any progress on resolution of issues back to the Board and all parties.

Recent changes to Public Health Orders that allow for the reopening of offices, increasing group size of indoor gatherings and updates to flight schedules in response to increased travel within Nunavut have enabled the Board to reconsider options for resuming the meetings. The Board has developed this procedural direction after considerable deliberation and assessment by the Board of:

- the emerging best practices of courts and tribunals across Canada, including tribunals similar to the NIRB;
- available technology and technological limits;
- the rights of Inuit to meaningful participation in the Board's processes;
- the requirements to give due regard and weight to the tradition of Inuit oral communication and ensuring the participation of Elders and Inuit knowledge holders;
- the promotion of public awareness and public participation;

- consideration of the Board's objectives for the conduct of these next steps in the Board's assessment;
- the issues identified by parties when commenting on the form of the proposed resumption of Technical Meetings in April; and
- the recent submissions from Baffinland and the Qikiqtani Inuit Association about the Inuit Certainty Agreement and demonstrated progress in the reduction of outstanding technical issues.

In the development of this guidance, the Board emphasizes that the preservation and protection of the health of participants to the process, and Nunavummiut in general, remains a central guiding principle, and the Board has modified our existing processes to reflect the current guidance of public health authorities. The Board also recognizes however, the importance of the Board finding a way to continue to deliver on our mandate and conduct thorough and timely assessments even during this unprecedented and challenging time. To all parties, the Board notes that the COVID-19 pandemic has had global and far-reaching effects on all decision-makers who generally hold in-person proceedings to support their decision-making. The Board notes that although there is a strong desire and comfort in returning to the Board's pre-pandemic practices, the Board has concluded that modifications and new approaches are necessary because an indefinite suspension of the Board's usual in-person proceedings to await a return to normal is unacceptable.

With these considerations in mind, the Board has directed that the following modifications to the previously planned processes to resume the Technical Meeting, Community Roundtable and Pre-Hearing Conference associated with the assessment of the Phase 2 Development Proposal are required. Specifically, these modifications will enable the NIRB to hold a combination of in-person and teleconference meetings to complete the next steps for this assessment. While the Board recognizes that these modifications require all parties, including the Board, to adopt new approaches that may not be their preference, the Board is entitled, and obligated to modify our processes to fulfill our objectives. The Board appreciates the flexibility and patience of all parties as we all adapt to our changed circumstances and, as noted in the NIRB's April 24 letter clarifying expectations around reconvening the meetings, will be seeking the input of parties in determining the detailed logistics of these events.

In providing this guidance on next steps for the assessment, the Board preserves the right to further modify the proposed processes - as may be required to reflect changed circumstances such as:

- Updates to applicable guidance from public health authorities and changes to public health measures put in place to prevent the spread of COVID-19;
- Technological innovations and limits;
- New information from parties; and
- The receipt of required funding from Crown-Indigenous Relations and Northern Affairs Canada.

#### TECHNICAL MEETING, COMMUNITY ROUNDTABLE AND PRE-HEARING CONFERENCE

The NIRB has modified the format of the upcoming Technical Meeting, Community Roundtable and Pre-hearing Conference using a hybrid approach to ensure that in-person community

engagement can be preserved, while recognizing that there are significant travel restrictions that may prevent participants who are not resident within Nunavut from being able to travel into the Territory. The Board has concluded that combinations of in-person and video conference meetings, teleconference sessions, and the receipt of written and video submissions by the parties are the best alternatives to the in-person attendance of all participants. The Board has determined that limited numbers of participants can attend in-person meetings in Nunavut while still observing public health directions. As Pond Inlet is the closest potentially impacted community, Pond Inlet will operate as the central hub for the in-person meetings, with the Community Roundtable and Pre-Hearing Conference being chaired by the NIRB in that location. For parties represented by individuals who are unable to travel into Nunavut, the Board will establish one or two central locations or “hubs” outside of Nunavut where these parties will gather in-person for the meetings. These southern hubs will be operated in compliance with the directions provided by public health authorities in the relevant jurisdictions and will be able to participate in the Community Roundtable and Pre-Hearing Conference via video and audio links to the hubs in Nunavut throughout the proceedings.

Recognizing that extensive technical review comments were previously submitted to the NIRB in advance of the Technical Meeting Pre-Hearing Conference that was cancelled in March 2020, and acknowledging that the Inuit Certainty Agreement provided by the Qikiqtani Inuit Association and Baffinland indicated that a number of the Regional Inuit Association’s outstanding technical issues have been resolved and that progress has taken place since April, the Board proposes the following timelines for the completion of the next steps in the assessment.

<b>Tentative Dates</b>	<b>Meeting</b>	<b>Locations/Mode</b>
<b>August 31-September 3, 2020</b>	Technical Meeting	Teleconference
<b>September 28-30, 2020</b>	Community Roundtable	Pond Inlet (in person primary) Northern hub (Iqaluit) Southern hub (to be determined, Ottawa and Winnipeg being considered)
<b>September 30-October 1, 2020</b>	Pre-Hearing Conference	Pond Inlet (in person primary) Northern hub (Iqaluit) Southern hub (to be determined, Ottawa and Winnipeg being considered)

In order to ensure that the additional resources required to directly support community engagement are available during these events, the NIRB notes that Baffinland has committed to having Nunavut-based company representatives attend the in-person sessions in Nunavut, if possible, and to make its southern-based staff, subject matter experts and environmental consultants available to respond to questions and comments from community members by virtual means (videoconference link, on-line streaming, or teleconference links) further supporting public participation. The text that follows provides parties with a high-level summary of the general logistics and modifications to Board processes associated with the Board recommencing the reconsideration process for the Phase 2 Development Proposal.

## **TECHNICAL MEETING**

The Technical Meeting will be conducted by teleconference to provide an additional opportunity for the Proponent, Regulators and Intervenor to discuss outstanding issues and provide updates regarding the progress made since April 2020 with respect to resolution of outstanding technical matters raised by parties during the Public Hearing in November 2019. The focus remains on items identified through parties' review of the Addendum to the Final Environmental Impact Statement<sup>1</sup> (FEIS Addendum) and identified in Final Written Submissions<sup>2</sup>, or those associated with the submission of additional information from Baffinland following the adjournment of the Public Hearing<sup>3</sup> and cancellation of the Technical Meeting in March 2020<sup>4</sup>. The Technical Meeting will be facilitated by the NIRB staff, with participation by the Proponent, responsible authorities, Registered Intervenor, and interested parties and will be kept as informal as possible with the objective of identifying, addressing and/or resolving outstanding technical issues prior to the Pre-hearing Conference.

The Technical Meetings are a platform for Baffinland and Intervenor to discuss outstanding issues and attempt to find resolutions, therefore questions posed by Intervenor should focus on the parties' key issues. While priority may be given to items within the following categories, pre-determined restrictions on topics will not be imposed, and the facilitator will be responsible to gauge the progress in completing the agenda or recommending breakout sessions, if necessary, to maintain the schedule.

- Items raised during the Public Hearing in November 2019 (including but not limited to relevant deferred questions);
- Items identified through parties' review of the Final Environmental Impact Statement (FEIS) Addendum or previous Final Written Submissions; and
- Additional feedback associated with the submission of information from Baffinland just prior to, or directly following the November Public Hearing. Should Parties wish to rely on materials that are not already available on the NIRB's Public Registry (e.g., Results from 2019 Studies), they should be prepared to circulate electronic copies to participants and the Board, which will be posted on the Public Registry.

For the purpose of developing an agenda for the meetings, parties are being asked to provide updates on progress of discussions and resolutions of previously identified technical issues, especially where the remaining outstanding issues may focus on a key theme **by August 11**. In both this current update and throughout the proposed Technical Meeting, parties should be prepared to speak to whether their technical review comments have been satisfactorily addressed by Baffinland and, if not, to provide clarification as to what issues remain outstanding and may expect to be highlighted as parties prepare their final written submissions.

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<sup>1</sup> NIRB Public Registry [www.nirb.ca/project/123910](http://www.nirb.ca/project/123910), Document ID No.: 320614-320620, 320623-320633, and 320551-320613

<sup>2</sup> NIRB Public Registry [www.nirb.ca/project/123910](http://www.nirb.ca/project/123910), Document ID No.: 326940-326967 and 327046-327136

<sup>3</sup> NIRB Public Registry [www.nirb.ca/project/123910](http://www.nirb.ca/project/123910), Document ID No.: 327956 and 327957

<sup>4</sup> NIRB Public Registry [www.nirb.ca/project/123910](http://www.nirb.ca/project/123910), Document ID No.: 328917; and Inuit Certainty Agreement Document ID No. 330682

## **COMMUNITY ROUNDTABLE AND PRE-HEARING CONFERENCE**

The Community Roundtable and Pre-Hearing Conference will consist of in-person meetings at central locations or “hubs” in Pond Inlet and Iqaluit in Nunavut, and Ottawa and Winnipeg for parties represented by individuals not able to travel into Nunavut. The NIRB will be working with professional Audio/Visual support companies to ensure that all locations are connected through video feed, with backups provided by audio feed, to ensure that all hubs are linked throughout the proceedings and that simultaneous Inuktitut interpretation remains available to all participants.

The purpose of the Community Roundtable portion of the Pre-Hearing Conference is to provide the opportunity for representatives from communities identified as potentially impacted by the proposed Project amendment to be at the table to discuss the Phase 2 Development Proposal and participate in the Board’s assessment. As planned for the previous in-person Technical Meetings suspended in March, the NIRB will be inviting up to three (3) representatives from each of the affected communities in the North Baffin Region to participate in the Community Roundtable and Pre-Hearing Conference from a hub location(s) in Iqaluit. The NIRB will be providing an update to the community organizations to update their nominations and begin booking travel. The NIRB will be covering the costs of travel, accommodations and meals for these community representatives travelling to Iqaluit to allow for their attendance and participation in the Community Roundtable and Pre-hearing Conference. There will be supplemental communication by the NIRB closer to these gatherings to confirm meeting logistics, identify the technology to be used and to identify opportunities for training that may be provided to support participants. In undertaking these meetings, the Board intends to build on parties’ experiences and feedback at these modified proceedings to better inform discussions at the Pre-Hearing Conference on how best to use technology and to identify modifications that may be required to move forward to a Public Hearing.

Additional information on the agendas for these sessions as well as details about the conduct of these meetings will be issued in subsequent correspondence when logistical details such as meeting venues and access for all hubs have been confirmed.

As the Public Hearing proceedings were suspended in November 2019, the Pre-hearing Conference will focus on determining the specific steps and processes required to reconvene the Public Hearing, specifically: timelines for the exchange of documents and information required by parties prior to the Public Hearing; finalization of issues for the Public Hearing; and details such as format, venue, timing or other matters related to the logistics for the Public Hearing. As the Board anticipates that public health measures necessary to prevent the spread of COVID-19 will likely be in place for the foreseeable future, there will be a specific discussion during the Pre-Hearing Conference of the modification of the Board’s Rules governing Public Hearings to reflect the applicable public health measures. Intervenor will be required to identify which issues were resolved during the technical meeting and since the final written submissions, and those issues which remain outstanding, and which issues parties will be continuing discussion at the Public Hearing. Based on the discussions at the Pre-Hearing Conference, the format, dates, time and venues for the reconvened Public Hearing would be decided by the Board and the Board’s direction would be communicated to all parties in the Board’s Pre-hearing Conference Decision Report.

## UPDATED PROJECT SCOPE

In January 2020 Baffinland was required to submit an updated scope to clarify for the parties and the Board what Baffinland's preferred options were with respect to several aspects of the Phase 2 Development Proposal including: railway alignment, wildlife mitigation and/or human crossing structures, options for anchorage locations, and other areas of community concern. As a result of additional email exchanges since the January 2020 scope clarification<sup>5</sup> was received. Baffinland responded that while its previous description of shipping routes for the Phase 2 Development Proposal was based on what was approved under the Early Revenue Phase Project Proposal, the option to anchor in waters off Greenland, as identified in the Icebreaking Assessment submitted in May 2019 should be actively considered within the scope of this assessment. From the information received in January 2020 and subsequent clarifications, the NIRB will be issuing additional guidance on the updated scope of proposal prior to the technical meetings.

## PARTICIPATION OF GREENLAND

The Board has also received additional direction from the Government of Canada<sup>6</sup> that it expects its responsibilities to the Government of Denmark (Greenland) under the Convention on Environmental Impact Assessment in a Transboundary Context (the *Espoo Convention*) to be fulfilled through the NIRB's assessment process. Noting the preliminary direction provided with the Government of Canada's update, the NIRB will be including the Government of Denmark (Greenland) in all assessment related correspondence and expects to engage further with the relevant agencies to determine how they wish to participate in the next steps in the assessment.

## PARTICIPANT FUNDING FOR INTERVENERS

In respect of the participant funding program provided by Crown-Indigenous Relations and Northern Affairs Canada, the NIRB has initiated discussions about the potential need for additional funding to be provided to Intervenor to reflect the modifications to the Board's processes outlined in this correspondence, and the proposed dates for in-person meetings as well as the associated technical review. Additional information will be provided in the coming weeks on next steps for Intervenor with respect to Participant Funding.

## SUMMARY OF KEY DATES

In closing, the following is a summary of the important upcoming deadlines associated with the upcoming technical meeting, further steps and associated deadlines will be discussed as either logistics are confirmed or the subsequent events. Parties are asked to direct all enquiries to the NIRB at [info@nirb.ca](mailto:info@nirb.ca) regarding the deadlines:

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<sup>5</sup> NIRB Public Registry [www.nirb.ca/project/123910](http://www.nirb.ca/project/123910), Document ID No.: 329578

<sup>6</sup> NIRB Public Registry [www.nirb.ca/project/123910](http://www.nirb.ca/project/123910), Document ID No.: 330537, 329578, 329579, and 329580



<b>August 11, 2020</b>	Parties submit updates to their technical comments/previous Final Written Submissions to summarize progress of issues toward resolution or identify key themes of outstanding issues
<b>August 14, 2020</b>	NIRB issues Draft Agenda for Technical Meetings
<b>August 27, 2020</b>	1) Baffinland submits presentations 2) Parties provide a list of representatives that will attend the meetings, including names, positions and respective area of expertise or authority.

The NIRB thanks all parties for their continued active participation in the NIRB's assessment of the Phase 2 Development Proposal. Should you have questions or require any additional clarification regarding the upcoming meetings, please contact Solomon Amuno, Technical Advisor II at (867) 983-4603 or via email at [samuno@nirb.ca](mailto:samuno@nirb.ca). Inquiries related to the NIRB's process should be directed to Tara Arko, Director of Technical Services at [tarko@nirb.ca](mailto:tarko@nirb.ca) or (867) 983-4611.

Sincerely,



Karen Costello  
Executive Director  
Nunavut Impact Review Board

cc: Megan Lord-Hoyle, Baffinland Iron Mines Corporation  
Lou Kamermans, Baffinland Iron Mines Corporation  
Tilde Roland Hoberg, Government of Greenland  
Jakob Holm Knudsen, Environmental Protection Agency, Ministry of Environment and Food of Denmark  
Helle Toldsted Eriksen, Environmental Protection Agency, Ministry of Environment and Food of Denmark  
Sif Zimmermann, Danish Landscape and Forest, Ministry of Environment and Food of Denmark