

July 24, 2020

Karen Costello  
Nunavut Impact Review Board  
P.O. Box 1360  
Cambridge Bay, NU  
X0B 0C0

**Re: Recommencement of NIRB Reconsideration Process and Rescheduling of Public Hearing for Baffinland Iron Mines Corporation's Phase 2 Proposal**

Dear Ms. Costello,

The purpose of this letter is to build on Baffinland's correspondence from July 7<sup>th</sup> and stress the serious nature of potential delays in the Phase 2 review process and urge the NIRB to resume, in early Fall, and without further delay, the Public Hearing of the Phase 2 project which was adjourned almost nine months ago. During the eight and a half-month delay in the Public Hearing, Baffinland has on multiple occasions requested the Board to reconvene the Public Hearing. The original motion put forward by Nunavut Tunngavik Incorporated (NTI) on November 6, 2019 called for a delay in the hearing process of eight months, later being revised to a requested pause of nine to twelve months to allow parties more time to review information and resolve issues. Throughout this time parties have conducted work to address the issues that spurred the NTI motion. Despite extensive and constructive work done by Baffinland to provide further information; extensive consultation with the QIA leading to the signing of the Inuit Certainty Agreement in June which substantially addresses outstanding issues; and further discussions with regulators and other interested parties and a nine-month opportunity for all parties to review information, we are concerned that the Board has not proposed new timelines to resume the delayed Public Hearing. While no other party suggested a longer pause in the process, NIRBs rescheduling of the Public Hearing in early Fall 2020 falls well within the requested timeframe brought forward by NTI.

Baffinland has already suggested that the need for scheduling a Technical Meeting has largely been fulfilled through bilateral work undertaken during the adjournment, consistent with the NIRB's direction from April 2020. Instead, both the Technical Meeting and Prehearing Conference could be achieved through written correspondence prior to a scheduled Public Hearing. In Baffinland's view, at this point any additional procedural steps requiring advance notice and logistical planning will serve little practical purpose and only unnecessarily delay the recommencement of the Public Hearing.

This potential delay in rescheduling the Public Hearing would constitute, in our view, a breach of procedural fairness, and a breach of the duty of NIRB to process the application for the Phase 2 Proposal, originally submitted in October 2018, on a timely basis. These points are provided to outline the extreme



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prejudice which further delay will cause to Baffinland, its contractors, its employees, and communities. As previously stated, Baffinland is particularly sensitive to seasonal sea-lift constraints and construction methodologies, where a one-month delay in the review can and will likely delay the Project by as much as year, inflicting disproportional harm to Baffinland, should the Phase 2 proposal be approved. Provided below is a summary of the points which Baffinland has been making since November 2019 about the need to move this process forward.

It is a breach of procedural fairness for a regulator to delay a review process unreasonably. This is particularly the case when the regulator is fully aware of the prejudice to the applicant and to those who rely on the current and continuing operations of the business of the applicant, including its contractors, its employees, and the communities. It is also particularly the case when it is within the reasonable control of the regulator to resume the Public Hearing which has now been adjourned since November 6, 2019.

In its letter of April 24, 2020, the NIRB encouraged all parties to use the pause in the Public Hearing process due to COVID-19 to continue working together to further the technical review of the project. We have done exactly as suggested. Our letter of July 8, 2020 summarized the work done by Baffinland, the QIA, territorial and federal regulators, and other interested parties to address and resolve outstanding technical issues. Specifically, we provided two critical updates for the NIRB's consideration, which are reiterated here with additional detail:

- Baffinland reached an agreement with the QIA - the Inuit Certainty Agreement - which significantly progressed several major subjects of key interest to Inuit, including Inuit led monitoring, adaptive management, food security and financial benefits, to name a few. As confirmed by the QIA in their letter of July 7, 2020, the agreement provides resolution to 48 of 53 technical concerns and provides a clear process for resolution of the final 5.
- During the eight and a half-month delay in the Public Hearing process, Baffinland has engaged with community groups, territorial and federal regulators and environmental Non-Government Organizations to resolve outstanding issues. To date over 90% of submitted technical issues are resolved or progressing towards resolution. Through the review process Baffinland has responded to 299 information requests (Dec 2018), 237 technical comments (Jan/Mar 2019), 163 final written submissions (Oct 2019) and 43 additional technical comments (Feb 2020). The fact that only 17 technical issues remain outstanding is ample proof of the technical rigor of the review process to date, and the readiness of this file to go to a Public Hearing.

Taking this significant progress into account, there is no need at this stage, to move backwards in the process and to schedule additional process steps. We note that during this eight and a half-month delay, the NIRB has not raised any technical issues in relation to the project. Accordingly, there is no reasonable need for a Technical Meeting and Prehearing Conference. To be clear, Baffinland's preference continues to be for a Public Hearing to be scheduled as soon as possible, with previous process steps accomplished in the interim through final written submissions and other requests for written input. We urge the NIRB



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to seek confirmation from intervenors through a written process that Baffinland's status of resolution of topics (i.e. the updated disposition table in its letter of July 8<sup>th</sup>, 2020) is an accurate reflection of their current status on their technical submissions.

If the NIRB determines a Technical Meeting and Prehearing Conference are required, Baffinland insists teleconferencing is an appropriate venue and less time than what the NIRB originally scheduled in March and April 2020 would be required. These steps, should the NIRB deem them absolutely necessary, could take place between now and a rescheduled Public Hearing commencing in early Fall 2020. Understanding that there is likely a desire for an in-person component to these process steps, under the current travel and public gathering allowances in Nunavut and across Canada, it could be possible for those Interveners interested and comfortable participating in an in-person component to do so at their own accord, albeit it in a modified manner that respects local public health restrictions.

Baffinland fully supports and agrees with QIAs position as stated in their July 7<sup>th</sup> letter that a component of the Public Hearing must be in-person in Pond Inlet. Baffinland is certain that a suitable in-person format can be arranged for the Public Hearing. Should the NIRB determine a Technical Meeting and Prehearing Conference to be necessary in advance of a Public Hearing, the notifications required to initiate these events should be issued as soon as reasonably possible, and the events themselves should be carried out in a timely manner that recognizes in-person gatherings are encouraged and can be arranged for the Public Hearing. It is therefore not necessary from any procedural standpoint to delay further process steps due to the organization of in-person meetings. It is imperative that the remainder of the review be carried out as expeditiously as possible.

For all of the above reasons, it is unreasonable for NIRB to impose any further delays on recommencing the Public Hearing of the Phase 2 project. Delaying the recommencement of the Public Hearing would be a breach of procedural fairness and would extend and exacerbate the prejudice which has already resulted from the eight and a half-month delay.

At the start of the Public Hearing in November, 2019, I advised that the expansion of the Mary River project operations under Phase 2 is crucial to the ongoing economic viability of the project. The eight and a half-month delay in the Public Hearing for Phase 2 has made these economic concerns and risks even greater. Further delay in process is likely to have significant consequences and will impact Baffinland's ability to fulfill its many obligations to contractors, employees, communities and other stakeholders.

Baffinland, the QIA, territorial and federal regulators, and other interested parties have made significant progress in resolving outstanding issues over the past eight and a half months. As noted above the NIRB has raised no technical issues. There is no reasonable basis for taking a backwards step in the process, by carrying out an additional Technical Meeting and Prehearing Conference without scheduling a Public Hearing to commence and complete this Fall.

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Baffinland appreciates the work of the NIRB to date and their continued dedication to the Phase 2 Proposal. While these are challenging times for all parties involved in the Phase 2 reconsideration process, Baffinland believes it has effectively adjusted to the circumstances and made significant advancements in the resolution of outstanding issues as presented to the Board in November 2019. It is now unreasonable to delay the review process any further and we strongly urge the NIRB to properly exercise its mandate and recommence the Public Hearing of the Phase 2 project, no later than early Fall 2020.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian Penney".

Brian Penney, CEO Baffinland

Cc PJ Akeeagok, President, Qikiqtani Inuit Association  
Aluki Kotierk, President, Nunavut Tunngavik Incorporated  
The Honourable Joe Savikataaq, Premier of Nunavut/Minister of Environment  
The Honourable David Akeeagok, Minister of Economic Development and Transportation  
David Qamaniq, MLA Tununiq  
The Honourable Dan Vandal, Minister of Northern Affairs  
Stephanie Autut, Executive Director, Nunavut Water Board  
Megan Lord-Hoyle, Vice President – Sustainable Development, Baffinland Iron Mines