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August 11, 2020

Tara Arko
Director of Technical Services
Nunavut Impact Review Board
Email: info@nirb.ca

RE: Request for Comments on the Notice of Motion from Baffinland Iron Mines Corporation

Dear Ms. Arko,

Thank you for the opportunity to comment on the Notice of Motion from Baffinland Iron Mines Corporation (the Motion). We provide the following comments:

1. The November 2019 Phase 2 Public Hearing declared the hearings on hold for 8 months to a year. As of August 4, 2020, the date of the Motion is not yet 8 months from the decision to defer the Phase 2 Hearings. This decision was made prior to public health directives from Covid-19 that made communication more difficult. It is unclear how prejudice could be claimed when this timeline had yet to be reached when the Motion was filed.
2. The November 2019 Phase 2 Public Hearing was deferred due to the need for further information and resolution of major issues. We commend the hard work by all parties over the last challenging eight months to resolve a large percentage of these issues. However, we question the 'resolved' status of some of these issues as listed in Appendix 2 – Phase 2 Disposition Table from Baffinland's July 8, 2020 letter. For example, issues around the Early Warning Indicators are marked as 'resolved,' however the Marine Environmental Working Group is waiting to receive the EWI framework and provide comments. Therefore the status that may be more appropriate is 'Outstanding, In Progress.'

There remain major unresolved technical issues, notably in regard to marine impacts and cumulative effects, as well as the new introduction of Greenland's participation in the assessment. The remaining unresolved technical issues require in-depth discussions on

methods, impact assessment, and cumulative effects; some of these issues would benefit greatly from further peer review. We suggest that delays in resolution may be solved by ensuring timely monitoring reports, providing opportunity for in-depth discussion in Working Group meetings, providing timely responses to regulator concerns and comments, as well as adhering to commitments such as providing a detailed framework on the Early Warning Indicators.

Based on the above, we suggest that Sections 20 (a) and (b) of the Motion may be overstated.

3. In regards to 20(a) of the Motion, we note the importance of Fisheries and Oceans Canada's response to the 2019 Annual Monitoring Report and their comments about the Marine Environmental Working Group (point 1.v).

Despite some success in resolving some technical issues one on one, we believe in the importance of everyone involved, especially community members, hearing and understanding the discussions between parties at these meetings. We believe this will help to resolve some of the long-standing technical issues.

4. In reference to 23, 24, and 25 of the Motion, we find reason in the Nunavut Impact Review Board's decision to hold off on setting the Phase 2 Hearing date. It is important that the technical issues be resolved and community hearings be valued. Pre-setting a Phase 2 Hearing date may indicate that the previous meetings are just going through the motions.

In 2018, when Northern Affairs Minister Dominic LeBlanc and Crown-Indigenous Affairs Minister Carolyn Bennett overrode the NIRB recommendation and allowed for an increase of up to 6MT for 2018 and 2019, they noted that *"the impacts of the production increase need to be more broadly examined during the Phase 2 reconsideration, and it will be important to integrate the experience, knowledge and data gained over the course of the next two production years into that review process."*

As these impacts are still under review, including the monitoring reports from 2019, we suggest that this examination has not yet occurred, especially in concert with previous years' monitoring. Understanding how these activities have impacted the area can help us to understand the impacts of an increase in production. We suggest that this is vital information to discuss as a part of the Phase 2 Technical Meeting, and therefore this information should be provided for discussion. We therefore suggest that Section 25 of the motion is inaccurate.

5. In regards to Section 28, the claim of prejudice due to loss of construction time and financial viability indicates assumptions that Phase 2 will achieve approval. The purpose of environmental impact assessments is to decide whether or not a project *should* go forward based on its environmental impacts. Section 28 of the Motion indicates that the Phase 2 Hearings may not be viewed as a valued decision tool.

6. With reference to Section 29 of the Motion, we suggest the NIRB is fully within its rights to ensure that all parties are prepared and able to fully participate. We understand the pressure on the proponent and the Nunavut Impact Review Board to adapt to challenging times. However, centering Inuit within environmental assessment processes is essential, and we therefore support the July 31, 2020 letter from the North Baffin community leaders and HTOs in their statements advocating for full and meaningful participation on their terms.

Thank you for the opportunity to comment on the Motion.

Sincerely,

(original signed by Amanda Joynt)

Amanda Joynt
Policy Adviser
Oceans North