

Marjorie Kaviq Kaluraq  
Chairperson, Nunavut Impact Review Board

January 6, 2022

**RE: Hamlet of Clyde River and Nangmoutaq HTA Closing Statement for the NIRB Review of Baffinland's 'Phase 2' Proposal**

Ms. Kaluraq,

The Hamlet of Clyde River and Nangmoutaq Hunters and Trappers Association (HTA) do not believe that Baffinland's 'Phase 2' application should be approved at this time. The Hamlet and HTA urge the Nunavut Impact Review Board (NIRB) and federal government not to approve the Phase 2 application until the following issues are resolved:

- 1) The Hamlet of Clyde River and Nangmoutaq HTA support the principle of Free, Prior, and Informed Consent. Major development projects like Phase 2 should not be approved without the support of the Hamlets and HTAs in the most affected communities. The community of Pond Inlet is the most affected by the Phase 2 proposal. The Hamlet of Pond Inlet and Mittimatalik HTA do not support the Phase 2 expansion.
- 2) The Hamlet of Clyde River and Nangmoutaq HTA are concerned that the Phase 2 expansion could have significant negative effects on the Arctic environment, Inuit harvesting rights, and local food security. Baffinland's plans include building a railroad that cuts across north Baffin Island. The Hamlet and HTA believe that this has the potential to impact caribou migrations, making it more difficult, if not impossible, for Clyde River hunters to access caribou. The Hamlet and HTA are further concerned that Baffinland's proposals to double (and possibly triple) shipping volumes through Milne Inlet could disturb marine mammal migrations, making it difficult or impossible for Clyde River hunters to access marine mammals that are integral to the Inuit hunting way of life. Shipping operations also have the potential to disturb several marine protected areas, including the Tallurutiup Imanga National Marine Conservation Area, the Ninginganiq National Wildlife Area, and the Qaqqulluit National Wildlife Area.
- 3) The Hamlet of Clyde River and Nangmoutaq HTA believe Baffinland needs to make changes to its plans for project expansion. Baffinland is proposing to build two railways and two ports for this mine. Baffinland's alternatives assessment should have considered the viability of the Mary River project with only one rail/port option. The Hamlet and HTA believe Baffinland needs to choose one rail/port option. Two railways and two ports will cause unnecessary disturbance to Arctic ecosystems. Two railways and ports will also be an unjustifiable infringement on our member's harvesting rights enshrined in the 1993 Nunavut Agreement. The Hamlet and HTA are concerned that Canada will be breaching its fiduciary responsibilities to Inuit if it approves this proposal without modification.

- 4) The Hamlet of Clyde River and Nangmatauq HTA believe that expanding the Mary River project under the present circumstances would violate adaptive management best practices, including the precautionary principle. Inuit from several communities have observed serious changes to sea mammals since Baffinland began operations. Very few narwhal migrated to the Clyde River area in the summer of 2021. Changes to narwhal health have been documented in peer-reviewed scientific research.<sup>1</sup> Baffinland's own monitoring has revealed a significant decline of narwhal near Pond Inlet. Communities need to determine if Baffinland's activities are responsible for these environmental changes before allowing any further increases in shipping. Several HTAs, including the Mittimatalik HTA, have requested a moratorium on further project expansions until more research is conducted into the environmental changes we are observing and the potential role of Baffinland's activities in driving these changes.
- 5) The Hamlet of Clyde River and Nangmatuaq HTA believe that Baffinland has not met the burden of proof required in a NIRB environmental review. It is the proponent's responsibility to show that the potential environmental impacts can be mitigated or reversed. Baffinland has not provided enough evidence to demonstrate that Phase 2 will not cause permanent harm to the Arctic environment.
- a. Many Inuit Knowledge holders who participated in the NIRB technical hearings and community round table were unconvinced that the Phase 2 proposal will have no significant impacts on the Arctic environment and Inuit hunting way of life.
  - b. Scientists working for the federal government, territorial government, Inuit organizations, and environmental organizations disagreed with the conclusions in Baffinland's Environmental Impact Statement. Specifically, they disagree with the conclusion that the project will have no significant impacts on the Arctic environment. Numerous scientific experts have testified that there is too much uncertainty to support these conclusions.
  - c. Baffinland claims that it will address this uncertainty with adaptive management. However, Baffinland has not provided sufficient details of its adaptive management plans. The details that were provided were not adequately examined or discussed during the review process. Despite repeated requests from communities, Baffinland did not circulate draft thresholds, triggers, actions, and responses until very late in the review process (March 2021). Clyde River representatives asked questions about this document during April 2021 hearings. However, representatives of federal and territorial governments responded that they had not reviewed this document prior to the hearings. Since that date, the Hamlet and HTA have received no further details about adaptive management thresholds, triggers, and actions. This document was not discussed during the community round table, nor was it addressed in the written exchanges in the lead-up to the community roundtable. It is important to note that the Department of Fisheries and Oceans agreed with Clyde River's contention that the thresholds, triggers, actions, and responses were one of the most important issues in the NIRB review.

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<sup>1</sup> Watt, C. A., Simonee, J., L'Herault, V., Zhou, R., Ferguson, S. H., Marcoux, M., & Black, S. (2021). Cortisol levels in narwhal (*Monodon monoceros*) blubber from 2000 to 2019. *Arctic Science*, 1-9. <https://doi.org/10.1139/as-2020-0034>

- d. The Federal Court of Appeal has ruled that vague commitments to adaptive management should not satisfy requirements of environmental reviews: “Indeed, acceptance of vague adaptive management schemes in circumstances such as these would, in my view, tend to call into question the value of the entire review panel process – if all such decisions could be left to a later stage, then the review panel process would simply be for the sake of appearances” (*Taseko Mines Ltd. v Canada*, 2017 FC 1099, para 124).
- e. Academic research has shown that proponents frequently use the concept of adaptive management as a strategy to guarantee project approval during environmental assessments in other jurisdictions, but rarely implement adaptive management plans in a meaningful way.<sup>2</sup> We are concerned that Baffinland is similarly abusing the concept of adaptive management in a way that puts our environment at serious risk.
- f. As explained above, we are not convinced of the sincerity of the proponent’s commitments to adaptive management best practices. If Baffinland was serious about using adaptive to minimize environmental effects, it would not insist on doubling production when significant and poorly understood changes are occurring to narwhal health and distribution in the project area.
- g. Baffinland representatives seem to be over-stating the amount of control Inuit will have over the project through the Inuit Stewardship Plan and Inuit Certainty Agreement. Baffinland representatives have repeatedly claimed that Inuit will have the ability to stop the project if they ‘feel the project is having unacceptable environmental effects.’ Sometimes they used the metaphor of a ‘red button’ Inuit can use to stop project activities. This appears to be a misrepresentation of the decision-making provisions in the Inuit Certainty Agreement. Decisions to alter mine operations over the long-term will be based on specific monitoring thresholds being exceeded. As noted above, these thresholds have yet to be determined, and therefore cannot be assessed during the NIRB review. Moreover, the decision-making process outlined in the Inuit Certainty Agreement is very complicated. The Hamlet and HTA are concerned that our participation in these decisions will be limited, because of our limited capacity to navigate the complex bureaucratic processes outlined in the Inuit Certainty Agreement.
- h. The environmental working groups for the Mary River project appear to be dysfunctional and ineffective. The majority of working groups members – including federal government departments, Inuit organizations, environmental organizations, and the Mittimatalik HTO – have all indicated that these groups are not currently effective forums for addressing project impacts. As the Hamlet and HTA explained in our December 2020 submission, these groups suffer from a lack of transparency and an inappropriate level of control by the proponent. Moreover, Clyde River Inuit have no direct representation in these working groups, despite the fact that these groups make decisions that could have serious repercussions for our Aboriginal rights and food security. Baffinland has indicated that it will revise the terms of reference for these groups. However, it is our understanding that Baffinland has been discussing new terms of reference with the working groups for over a year. If these groups have been unable to agree on the terms of reference for over a year, why should we believe that an agreement would be reached after project approval?

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<sup>2</sup> Olszynski, M. (2017) Failed Experiments: An Empirical Assessment of Adaptive Management in Alberta’s Energy Resources Sector. *UBC Law Review*. 50(3): 697-796

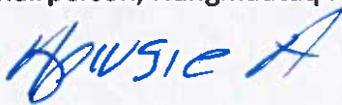
- 6) The Hamlet of Clyde River and Nangmoutaq HTA are concerned that Baffinland may have overstated the economic benefits the Phase 2 expansion will provide to North Baffin communities.
  - a. Baffinland has promised to hire large numbers of Inuit if Phase 2 is approved. We are concerned that these promises are not feasible. As we understand it, Phase 2 will reduce the number of jobs at the Mary River project. Baffinland does not seem to have a detailed plan to address barriers to employment for Inuit. Baffinland has repeatedly failed to deliver on its promises to employ large numbers of Inuit in the past, and we have been given no reason to believe that this time will be any different.
  - b. Baffinland has made highly misleading statements about project benefits. In a letter to Pond Inlet residents, Baffinland claimed that a proposed research station to be operated by McGill University would be cancelled if Phase 2 is not approved. However, representatives of McGill University have clarified that the research station will go ahead with or without Baffinland's support. We are concerned that other statements from Baffinland about project benefits might have been similarly misleading.
  
- 7) The Hamlet of Clyde River and Nangmoutaq HTA are concerned that our procedural rights may have been breached at several stages in the review process.
  - a. During the April 2021 public hearings, NIRB imposed strict limits on the amount of time intervenors were allotted to ask questions. The Hamlet and HTA's questions were clearly addressed to specific intervenors. However, these questions were repeatedly re-directed by the NIRB chair to the proponent and additional intervenors, using up the very limited time we were provided for questions.
  - b. In September 2021 Baffinland provided an additional written submission to NIRB. This submission contained new information pertaining to issues raised by the Hamlet and HTA in its presentations and questions. These issues include adaptive management plans, increased levels of cortisol in narwhal in Eclipse Sound, and the functioning and effectiveness of the environmental working groups. Because this submission contained new information, the NIRB allowed some intervenors to comment on Baffinland's submission. However, neither the Hamlet nor the HTA were included on the list of intervenors that were permitted to provide written comments.
  - c. During the November 2021 community round table, intervenor groups were not provided with an opportunity to address the round table participants and explain their outstanding concerns with the proposed mine expansion. However, NIRB allowed representatives of the union representing Baffinland employees – IUOE Local 793 – to play a video explaining the union's position on the Phase 2 proposal. IUOE was not a registered intervenor in the process. Had the Hamlet and HTA known that organizations could display videos during the community round table, we would have considered creating a video of our own. It was procedurally unfair for NIRB to allow an unregistered party to present at the community round table while denying registered intervenors the opportunity to do the same. The union should have registered as an intervenor and displayed the video during the appropriate stage in the process. The Hamlet and HTA are concerned that allowing this video to be screened created a biased forum for discussing the proposed project.

Thank you very much for considering our submissions and concerns. We eagerly await the NIRB's Final Hearing Report and the Minister's decision for this project.

Alan Cormack  
Mayor, Hamlet of Clyde River

A handwritten signature in blue ink, appearing to read 'Alan Cormack', with a stylized flourish at the end.

Apiusie Apak  
Chairperson, Nangmoutaq Hunters and Trappers Association

A handwritten signature in blue ink, appearing to read 'Apiusie A', with a stylized flourish at the end.