



January 10, 2022

Karen Costello
Executive Director
Nunavut Impact Review Board
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Via email: kcostello@nirb.ca; info@nirb.ca

Government of Canada's final closing statements for the assessment of Baffinland Iron Mines Corporation's (BIMC) Mary River Phase 2 Development Proposal

Dear Ms. Costello,

Please find attached the Government of Canada's final closing statements for the assessment of Baffinland Iron Mines Corporation's (Baffinland or proponent) Mary River Phase 2 Development Proposal (Phase 2). The federal departments and agencies participating in this assessment include Crown-Indigenous Relations and Northern Affairs Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, Health Canada, Natural Resources Canada, Parks Canada and Transport Canada. The comments provided are in accordance with their respective regulatory and mandated responsibilities.

The Canadian Northern Economic Development Agency's Northern Projects Management Office (NPMO) is submitting departmental submissions on behalf of Crown-Indigenous Relations and Northern Affairs Canada, Parks Canada, Environment and Climate Change Canada, and Fisheries and Oceans Canada (attachments 1-4).

Although Transport Canada and Natural Resources Canada do not have final submissions, the following statements should be considered by NIRB as their closing statements.

Transport Canada

Transport Canada worked with the proponent to address the questions/issues that the department had related to the project, including marine shipping, however Transport Canada does acknowledge that some parties may still have outstanding concerns related to the marine environment.

Natural Resources Canada

Within the context of the department's areas of expertise, Natural Resources Canada (NRCan) finds the conclusions presented by the proponent to be reasonable. NRCan maintains its specific recommendations with respect to permafrost and terrain stability, as well as encouraging Baffinland to follow the recommendations in the design memo for the Northern Railway Corridor provided by Hatch, but in general agrees with the proponent's approach with respect to permafrost and terrain stability.

Remarks on the proponent's draft Project Certificate

Included in this submission are comments on Baffinland's proposed Terms and Conditions and Commitment List for Phase 2 (attachments 5-6). The Government of Canada offers the following general comments relating to Project Certificate No. 005 and Baffinland's proposed draft Terms and Conditions for the Phase 2 Development Proposal:

- Baffinland has recommended a number of modifications to the Project Certificate with the objective of removing duplication between a project term and condition and a regulatory authorization. Duplication between a project certificate term and condition and a regulatory authorization is consistent with the *Nunavut Planning and Project Assessment Act* (NuPPAA). Subsection 137(1) of NuPPAA requires that regulatory authorities, to the extent of their jurisdiction and authority to do so, incorporate project certificate terms and conditions into their regulatory authorizations. In other words, the Board has the ability to set minimal standards for regulatory authorizations. Some regulatory authorizations may be amended from time to time (for instance water licenses) and the Board may consider that there is value in keeping duplicate terms and conditions in the Project Certificate to ensure the minimal standard they set will remain in effect for the life of the project.
- Proposed revisions to terms and conditions must take into account and be consistent with the original intent for their inclusion in the Project Certificate.
- The Government of Canada prefers that prescriptive language be used throughout the Project Certificate, for example using "shall" instead of "should." In order to ensure enforceability of the Project Certificate, its Terms and Conditions should include specific criteria of completion, clearly defined timelines and reporting requirements, and responsible parties, to confirm their fulfillment to the satisfaction of the Minister.
- The Project Certificate under reconsideration applies to both the Northern and Southern shipping routes. It was developed over many years and in relation to a number of distinct project proposals and phases. The Southern route is not within the scope of Phase 2. In this circumstance, there is a risk that a modification made in the context of Phase 2 will have unintended effects on the Southern route component of the project. To manage this risk, the Government of Canada recommends adopting a cautious approach in reviewing and modifying terms and conditions, in particular where Baffinland proposes modifications that are not specific to the Phase 2 proposal.
- An unprecedented "Stakeholder Review" section has been added in Baffinland's proposed draft terms and conditions. If the Board intends to add this new "Stakeholder Review" section as part of the Project Certificate, then this will need to be defined and implications clarified by the Board.

Remarks on the assessment of transboundary impacts and activities

The Government of Canada would also like to make the following remarks on the assessment of transboundary impacts and activities under NuPPAA.

NuPPAA has provisions that deal with transboundary impacts (section 113) and transboundary projects (sections 156-159). These provisions set out that the Board has the authority to consider the transboundary impacts of the project (section 113) and to assess transboundary works and activities that are within the project's scope (subsection 158(2)).

Further, subsections 158(4) and 158(5) set out that, once the Board issues its final report, the responsible Ministers and the Board will exercise their duties and functions “in relation to the parts of the Board’s report that are applicable to or affect the designated area” and “in relation to terms and conditions that are applicable to or affect the designated area”. These provisions do not apply to the Board in the preparation of its final report.

In the Government of Canada’s view, the expression “that apply to or affect the designated area” means that the Board and the responsible Ministers have broad authority to assess and regulate activities carried out beyond the designated areas that have a connection with the designated area, for instance if they have the potential to cause impacts to the designated area.

Comments on the Espoo Convention

Under the Espoo Convention, potentially affected Parties to the agreement are consulted on potential transboundary impacts of proposed activities and mitigation measures to reduce or eliminate those impacts to inform decision making on the project. In accordance with the Espoo Convention, Canada, working with Denmark and Greenland, provided the affected public in Greenland with opportunities to be informed of, and to make comments or objections on the proposed activity, and for the transmittal of these comments or objections to Canada. Public comments received were then provided to the Board, because it is the entity that is conducting the environmental assessment in Canada for this project. Article 6.1 of the Espoo Convention requires that due account is taken of these comments from Greenland and Denmark in the decision making for the project. As set out above, it is Canada’s opinion that the Board has the authority under NuPPAA to assess the transboundary components and impacts of the project in light of the relevant evidence and views heard throughout the assessment.

Information regarding the Northern Participant Funding Program

We are also attaching information regarding the Northern Participant Funding Program in relation to the Board’s reconsideration of Baffinland Iron Mines Corporation’s proposed Mary River Phase 2 Project (attachment 7).

The Government of Canada would like to commend the Board for using innovative approaches to complete the Hearing for Baffinland’s Phase 2 proposal under unprecedented circumstances.

If you have any questions about the Government of Canada’s final closing comments, please contact Adrian Paradis, Senior Project Manager at adrian.paradis@canada.ca or 867-669-2595.

Sincerely,

Lisa Dyer
Director General
Northern Projects Management Office

Attachments:

1. Crown-Indigenous Relations and Northern Affairs Canada final closing statements
 2. Environment and Climate Change Canada final closing statements
 3. Parks Canada closing statements
 4. Fisheries and Oceans Canada final closing statements
 5. Government of Canada's comments on Baffinland's Proposed Draft Terms and Conditions for their Phase 2 Development Proposal.
 6. Government of Canada's comments on Baffinland's Proposed Commitment List
 7. Announcement to board of funded groups and funding levels
- c.c. Spencer Dewar, A/Regional Director General, Crown-Indigenous Relations and Northern Affairs Canada
- Mary Taylor, Director General, Environmental Protection Operations Directorate, Environment and Climate Change Canada
- Tom Hoggarth, Regional Director, Ontario and Prairies Region, Fisheries and Oceans Canada
- Chantal Roberge, Director, Environmental Health and Internationally Protected Persons, Health Canada
- Rinaldo Jeanty, Director General, Explosives, Regulatory and Business Services Branch in the Minerals and Metals Sector, Natural Resources Canada
- Jenna Boon, Field Unit Superintendent, Nunavut, Parks Canada Agency
- Shari Currie, Regional Director General, Prairie and Northern Region, Transport Canada