



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

March 23, 2023

To: Mary River Distribution List

Sent via email

Re: Request for Comments on Baffinland Iron Mines Limited's "Sustaining Operations" Proposal for the Mary River Project

Dear Parties:

On February 2, 2023, the Nunavut Impact Review Board (NIRB or Board) received a positive conformity determination from the Nunavut Planning Commission (the Commission or NPC) regarding Baffinland Iron Mines Corporation's (Baffinland) "Sustaining Operations" Proposal (SOP or Proposal) involving proposed changes to the approved Mary River Project. The Commission's correspondence noted¹:

- The activities proposed in the SOP were previously reviewed by the Commission and the previous conformity determinations [April 30, 2008, August 12, 2011, February 8, 2016, May 18, 2018, January 26, 2017, May 18, 2018, December 16, 2019, and June 7, 2022] still apply.
- The proposal has previously been assessed by the NIRB under File No. 08MN053.
- The current proposal represents a significant modification to the approved project and under Section 12.4.3 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and requires a screening by the NIRB.
- The Commission forwarded Baffinland's request for modification to Project Certificate No. 005 to the NIRB for further consideration.

On March 16, 2023, Baffinland completed its online application to the NIRB after updating the scope of the proposal to a shorter timeframe than submitted to the Commission and confirming the definition of operational flexibility. On March 21, 2022, the NIRB received correspondence from the NPC² indicating that the current application remained within the parameters of the February 2, 2023, conformity determination. After confirming that the application is complete, the NIRB is

¹ NPC Conformity Determination for Baffinland's SOP Application (NIRB Doc ID: 343379)

² NPC's Clarity around the Conformity for Baffinland's SOP Application (NIRB Doc ID: 343380)

circulating the proposal to seek input from Regulators and Interested Parties on the Board's assessment process.

SUSTAINING OPERATIONS PROPOSAL OVERVIEW

As set out in the project description filed with the NIRB, the Sustaining Operations Proposal reflects Baffinland's request to reconsider Term and Conditions 179(a) and (b) of Project Certificate No. 005 which specifies the operational limit Baffinland is authorized to transport (currently up to 4.2 million tonnes (Mt/a) of iron ore each year) from the Mary River Mine along the Tote Road to be shipped from Milne Inlet.

Baffinland is requesting to increase the annual maximum allowable trucking and shipping rate of ore by the Tote Road through Milne Inlet for an additional two (2) years, with the justification that this level of transportation is required to maintain the viability of current operations. Baffinland also indicated that if the transportation limits remain at 4.2 Mt/a, Baffinland would need to scale back operations, including significant reductions in employment when the 4.2Mt/a limit is reached. In addition to the already approved iron ore extraction and approved stockpiling at Milne Inlet under the Early Revenue Phase, the components of the proposed Sustaining Operations Proposal by Baffinland include:

- Transporting up to 6 Mt/a of iron ore along the Tote Road until December 31, 2024;
- Shipping up to 6Mt/a of iron ore from Milne Port using up to 84 ore carriers through the Northern Transportation Corridor until December 31, 2024; and
- "Operational flexibility" for the maximum shipping rates for this proposal is being sought when extenuating circumstances from the previous year result in ore stranding on the ore pad at the end of the shipping season. The modification of the shipping limit to include operational flexibility would allow Baffinland to surpass the 6 Mt/a shipping limits in a given year if there were extenuating circumstances in the previous year which resulted in the stranding of ore on the ore pad. (e.g., in 2022, heavy ice floes required shipping operations to be stopped several weeks early, leaving ore stranded on the ore pad). This flexibility would only be granted if the ore transportation limits for the Tote Road are strictly adhered to ensuring that Baffinland is only shipping excess ore from the previous year. In a year where this operational flexibility is in use, Baffinland would remain committed to using no more than 84 ore carriers in order to ship excess ore.

The project description and associated correspondence can be accessed directly via the NIRB's online Public Registry at www.nirb.ca/project/125767:

- Baffinland Letter Re Submission of Sustaining Operations Proposal (Doc ID: 343279);
- Project Description in English, Inuktitut, and French (Doc ID: 343259-343261); and
- NIRB Application (Doc ID:343280-343283).

REGULATORY FRAMEWORK GOVERNING NIRB'S RECONSIDERATION OF MODIFICATIONS TO THE APPROVED PROJECT

It is within the NIRB's discretion to consider proposed modifications to approved projects with an existing NIRB Project Certificate as set out in Article 12, Section 12.8.2 of the *Nunavut Agreement* and s. 112(1) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*) which contains similar wording. Section 12.8.2 of the *Nunavut Agreement* states:

NIRB may on its own account or upon application by a DIO, the proponent, or other interests, reconsider the terms and conditions contained in the NIRB certificate if it is established that:

- (a) the terms and conditions are not achieving their purpose;*
- (b) the circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the certificate was issued; or*
- (c) there are technological developments or new information which provide a more efficient method of accomplishing the purpose of the terms and conditions.*

Once the NIRB has determined that one (1) of the grounds for a reconsideration has been met, as set out in s. 112(3) of the *NuPPAA*, the Board must provide written notice to the proponent and the Responsible Minister that the NIRB is conducting a reconsideration. In the conduct of the reconsideration, the Board has discretion under s. 112(4) of *NuPPAA* to conduct the reconsideration “*in the manner that it considers appropriate in the circumstances.*”

COMMENT REQUEST

The NIRB acknowledges the Commission's determination that the Sustainable Operations Proposal constitutes a significant modification to the previously assessed Mary River Project (as amended) and warrants further assessment.

To determine the appropriate process to adequately conduct the Board's assessment of the potential ecosystemic and socio-economic impacts of the Sustainable Operations Proposal, the Board is inviting Designated Inuit Organizations, interested parties (including Intervenor who participated in the Board's previous assessments of the Mary River Project and subsequent modifications), members of the public, and those Regulatory Authorities with jurisdiction over components of the Mary River Project, to provide comments and advice to the Board with respect to the following specific items:

- a) Scale and scope of the proposed modifications in the context of the Board's previous impact assessments of the original Mary River Project, and the subsequent amendments proposed by Baffinland in the Early Revenue Phase Project, Production Increase Project, Extension Request to the Production Increase Project, and Production Increase Proposal Renewal;

- b) The specific terms and conditions that are applicable to the activities, works and undertakings included within the scope of the proposed modifications in the SOP, including consideration of how the proposed modifications would comply with the applicable terms and conditions, and identifying the specific terms and conditions that must be revised to reflect the proposed modifications;
- c) Preferences for the process and timing of the Board's assessment of the SOP, including but not limited to:
 - Identifying any key process steps the Parties consider necessary for the Board to complete a thorough and timely assessment of the SOP;
 - Need for, and preferences for the format,³ timing, and location of a potential Public Hearing to consider the Proposal;
- d) Any other matter of importance to the commenting party related to the Board's assessment of the SOP.

The NIRB requests that parties submit their comments on the items outlined above directly to the NIRB via email at info@nirb.ca by 12 p.m. MT on Thursday, **April 6, 2023**.

Should you have any questions or require additional clarification regarding the NIRB's approach to considering the SOP, please contact the undersigned directly at kcostello@nirb.ca or (867) 983-4608. If you have questions related to the proposal or accessing the information, please contact Cory Barker, at cbarker@nirb.ca or (867) 983-4607.

Sincerely,



Karen D. Costello
Executive Director
Nunavut Impact Review Board

cc: Megan Lorde-Hoyle, Baffinland Iron Mines
Lou Kamermans, Baffinland Iron Mines
Sharon Ehloak, Nunavut Planning Commission
Goump Djalogue, Nunavut Planning Commission
Stephanie Autut, Nunavut Water Board
Richard Dwyer, Nunavut Water Board
Carson Gillis, Nunavut Tunngavik Incorporated
Jorgan Aitaok, Nunavut Tunngavik Incorporated
Jared Ottenhof, Qikiqtani Inuit Association
Dianne Lapierre, Government of Nunavut
Laura Harris, Government of Nunavut
Adrian Paradis, Canadian Northern Economic Development Agency
Alexie Baillargeon, Northern Project Management Office
Environment and Climate Change Canada
Jane Chisholm, Parks Canada
Alasdair Beattie, Fisheries and Oceans Canada
Peter Unger, Natural Resources Canada

³ NIRB Public Hearings can be conducted in writing, via videoconference/teleconference, or in-person.

Jaideep Johar, Transport Canada
Joshua Arreak, Hamlet of Pond Inlet
David Qamaniq, Mittimatalik Hunters and Trappers Organization
Erasmus Ivvalu, Hamlet of Igloolik
David Irngaut, Igloolik Hunters and Trappers Association
Peter Ivalu, Igloolik Working Group
Moses Oyukuluk, Hamlet of Arctic Bay
Qaumayuq Oyukuluk, Ikajutit Hunters and Trappers Association
Jaypetee Audlakiak, Hamlet of Sanirajak
Paul Nagmalik, Hall Beach Hunters and Trappers Association
Alan Cormack, Hamlet of Clyde River
Apiusie Apak, Nangmoutaq Hunters and Trappers Association
Chris Debicki, Oceans North
World Wildlife Fund
Zacharias Kunuk, Nunavut Independent Television Network