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*Sent via email to the addresses above*

**Re: Request for Clarification on Parties' Expectations in Respect of the Audit Workshop as Directed by the Responsible Ministers in May 2020 for Baffinland's Mary River Project (as amended) Project Certificate No. 005**

Dear Parties:

As you are aware, on May 22, 2020, the Nunavut Impact Review Board (NIRB or Board) received the Minister's decision accepting the Board's recommendation that the "Extension Request to the Production Increase Proposal" related to Baffinland Iron Mine Corporation's (or Baffinland) Mary River Project (the Extension Request) be allowed to proceed subject to the revised terms and conditions of Project Certificate No. 005. In the decision sent on behalf of the Responsible Ministers approving the Extension Request, the following recommendation was provided to the Board:

*Following receipt of the Board's Report, the Crown consulted with the Qikiqtani Inuit Association. It expressed concern that Term and Condition 179(c) does not provide enough certainty as to when performance audits will be performed and submitted and that the content of the audits received to date had not met the*

*"spirit and intent" of the formal performance-based commitments made between it and the Proponent. The Association also suggested holding a workshop to clarify the scope of performance audits.*

*Responsible Ministers and I understand the Association's concerns and agree that Term and Condition 179(c) should be varied to ensure that performance audits are produced at regular intervals. Therefore, we are varying the wording as per section 112(6)(b)(i) of the Act to include the requirement that bi-annual performance audits must be produced by Baffinland on or before March 31st and September 30th of each calendar year. Further, we are recommending that the Board, given its monitoring experience and expertise, host a workshop with the intent of clarifying the scope of the bi-annual performance audits to ensure the audits meet their intended purpose. (Underlining added).*

Since that time, due to several intervening circumstances, including the COVID-19 pandemic and the completion of the Board's on-going assessments of Baffinland's Phase 2 Development Proposal and Baffinland's Production Increase Proposal Renewal in 2022, the Board has been unable to conduct the Audit Workshop as directed by the Responsible Ministers. In the Board's Reconsideration Report and Recommendations associated with the Phase 2 Development Proposal sent to the Minister in May 2022, the Board sought clarifications from the Responsible Ministers' regarding Term and Condition 179(c) that is the basis for the Ministers' recommended Audit Workshop. On November 16, 2022, the Minister of Northern Affairs, writing on behalf of the Responsible Ministers, provided the following clarifications:

*The Board raised a number of questions regarding Term and Condition 179(c). The responsible ministers are aware that there may be overlap between Term and Condition 179(c), recently added Term and Condition 189, and the functions of the independent third party ("Project Monitor") referenced in my decision letter for the Production Increase Proposal Renewal project proposal. I anticipate that greater clarity and specific answers to some of the Board's questions on this topic will be achieved as discussions on the role, scope and mandate of the "Project Monitor" develop. As indicated in my decision letter for the Production Increase Proposal Renewal project proposal, discussions will be initiated by November 30, 2022, and updates will be provided to the Board as appropriate. In the interim, it is our expectation that the requirement for performance audit reports continues, and the term "bi-annual" should be interpreted as "twice yearly."*

As Term and Condition 189 was added by the Responsible Ministers to Project Certificate No. 005 (Amendment 4) in 2022, following the Board's completion of their assessment of the Production Increase Proposal Renewal after the Minister conducted additional consultations with the Qikiqtani Inuit Association. The Board relies on guidance from the Responsible Ministers as to the nature and extent of overlap between the audits conducted under Term and Condition 179(c) and the functions of the "Project Monitor" established under Term and Condition 189. However, the Board's view following the receipt of the Ministers' November 16, 2022 decision was that although there may be overlap between the audits required under Term and Condition 179(c) and the independent Project Monitor under Term and Condition 189, the Board's obligation from May

2020 to complete the outstanding Audit Workshop, to clarify the scope of the bi-annual performance audits of Baffinland's Mary River operations, is independent from the parties' development of the Project Monitor role. Consequently, following the receipt of the Responsible Ministers' clarification, the Board provided notice that the long-awaited Audit Workshop was scheduled by the Board to be conducted in February 2023 in-person in Iqaluit.

Subsequently, the Government of Canada requested that the NIRB postpone the February Audit Workshop, noting that "*clarification of the role of the Project Monitor (both as Interim Project Monitor, and in a permanent role) is foundational to and linked to scoping the appropriate requirements and expectations for bi-annual performance audits.*" In place of the NIRB's February 2023 Audit Workshop, the parties conducted an in-depth workshop with the impacted Inuit communities on the scope and role of the proposed Project Monitor.

Based on the Board's understanding that discussions regarding the proposed Project Monitor have been on-going and recognizing that the bi-annual audits required under Term and Condition 179(c) are continuing to be conducted without the benefit of the scoping discussions taking place at the Audit Workshop, at the beginning of May the Board provided notice rescheduling the Audit Workshop in Iqaluit for May 29 and 30, 2023 (to take place after the NIRB's conduct of the Marine Monitoring Workshop in Pond Inlet).

On May 16, 2023, the NIRB received a joint request from Baffinland and the Qikiqtani Inuit Association to "*postpone this audit workshop until additional work has advanced on the Terms of Reference for the Project Monitor position*". As the Board recognizes the essential role of both Baffinland and the Qikiqtani Inuit Association in making the Audit Workshop a success, the Board has once again found itself in the situation of having to postpone the Audit Workshop.

Both postponements of the Audit Workshop were requested to advance discussions about the role and function of the Project Monitor under Term and Condition 189. The submissions by the Government of Canada, Baffinland, and the Qikiqtani Inuit Association appear to indicate that the advancement of discussions about the Project Monitor are viewed by these parties as critically linked to determining the scope of the audits to be conducted under Term and Condition 179(c). This position differs from the Board's understanding that the bi-annual audit obligations and the Board's associated obligation to conduct an Audit Workshop may occur in parallel but are not dependent on development and establishment of the Project Monitor. Further, the Board's obligations to conduct the Audit Workshop are based on a recommendation from the Responsible Ministers, and accordingly, the Board is bound by any further direction from the Responsible Ministers. However, the Board also notes that the relevant terms and conditions and associated recommendations were the result of consultations with the Qikiqtani Inuit Association and discussions with Baffinland regarding their obligations to implement the term and conditions. Accordingly, the Board recognizes that feedback from the Government of Canada, Baffinland, and the Qikiqtani Inuit Association regarding their positions in respect of the following may be relevant to the Board's rescheduling of the Audit Workshop. The Board requests that the Government of Canada, Baffinland, and the Qikiqtani Inuit Association provide the Board with their positions in respect of the following **by June 15, 2023**:

- With the addition of Term and Condition 189 and the establishment of the Project Monitor referenced therein, is the Audit Workshop as required by the Responsible Ministers in May 2020 still required to define the scope of the bi-annual audits?
- Is the further advancement of the Project Monitor as envisioned in Term and Condition 189 required before parties can fully participate in an effective Audit Workshop?
  - If so, what steps need to be completed to constitute sufficient progress under Term and Condition 189 for the Audit Workshop to proceed (i.e., Baffinland and the Qikiqtani Inuit Association indicated in their May 16, 2023 correspondence that “*at least until such time as the Terms of Reference for the Project Monitor are confirmed*” and/or “*until the Project Monitor concept has advanced further to a point where the parties can confirm the scope of any redundancy between the 179(c) audit requirements and the role of the Project Monitor*”); and
  - If so, when, in general terms do the parties anticipate these steps will be completed and parties will be prepared to participate fully in the NIRB’s Audit Workshop?

Should you have any questions regarding this request for clarification and/or the postponed Audit Workshop please contact Tara Arko, Director, Technical Services at [tarko@nirb.ca](mailto:tarko@nirb.ca).

Sincerely,



Karen D. Costello  
Executive Director  
Nunavut Impact Review Board

cc: Mary River Distribution List