

IN RE: Mary River Project – Sustaining Operations Proposal

Filed By: Qikiqtani Inuit Association (Designated Inuit Organization)

AFFIDAVIT OF JARED OTTENHOF

(Affirmed May 31, 2023)

I, JARED OTTENHOF, of Iqaluit, Nunavut, affirm and say as follows:

1. I am the Director of Lands and Resource Management for the Qikiqtani Inuit Association (“QIA”). I have personal knowledge of the facts and matters referred to in this affidavit, except where I have relied on the information of others that I believe to be true.
2. QIA is the Designated Inuit Organization (“DIO”) responsible for representing the rights and interests of Inuit in the Qikiqtani region in regulatory processes. It is also responsible for administering Inuit Owned Lands in the Qikiqtani Region, including the Inuit Owned Lands on which the Mary River Project (“MRP”) is located, and which are owned in fee simple by QIA.
3. As a part of its role as DIO, QIA is committed to ensuring that the voices of the Inuit, on whose lands and waters the MRP operates, are heard. QIA has provided comments on 8 project change applications since the MRP was approved 11 years ago.
4. As Director of Lands and Resource Management, I coordinate QIA’s involvement in regulatory matters related to the proponent, Baffinland Iron Mines Corporation (“Baffinland”), and the MRP. This includes the current Sustaining Operations Proposal (“SOP”) that is before the Nunavut Impact Review Board (“NIRB” or “the Board”).
5. I make this affidavit in support of QIA’s motion for the Board to permit Designated Inuit Organizations, Intervenors who participated in the Board’s previous assessments

of the MRP, and those regulatory authorities with jurisdiction over components of the MRP (collectively, “Parties”) to file additional final submissions no later than Wednesday August 9, 2023, after the close of all oral evidence in the Community Roundtables, and with an opportunity for Baffinland to file additional final submissions no later than Monday, August 14, 2023.

The Sustaining Operations Proposal and NIRB’s Request for Comments

6. NIRB’s March 23, 2023 letter to the Parties regarding the SOP, explained that it is within NIRB’s discretion to consider proposed modifications to an approved project with an existing NIRB Project Certificate. Attached as **Exhibit A** to this affidavit is a copy of the NIRB’s March 23, 2023 letter.

7. In the SOP, Baffinland has asked NIRB 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 Project along the Tote Road to be shipped from Milne Inlet.

8. Baffinland has requested to increase the annual maximum allowable trucking and shipping rate of ore by the Tote Road through Milne Inlet for an additional two years, with the justification being that an increased level of transportation is required to maintain the viability of current operations. 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 SOP 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 through the Northern Transportation Corridor until December 31, 2024; and
- “Operational flexibility” for the maximum shipping rates when extenuating circumstances from the previous year result in ore stranding on the ore pad at

the end of the shipping season. This 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.

9. I have been informed by Baffinland representatives and believe that following the 2022 shipping season, approximately 1.3 million tonnes of iron ore were left 'stranded' on the ore pad at Milne Inlet. I understand this to mean that in 2023, the requested operational flexibility would permit Baffinland to ship up to 7.3 million tonnes of iron ore.

10. In its March 23, 2023 letter, NIRB indicated that it considered the SOP to be a "significant modification to the previously assessed Mary River Project", and solicited comments from the Parties to inform the appropriate process for the review. It asked for comments on the following:

- 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;
- 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;
- Preferences for the process and timing of the Board's assessment of the SOP, including but not limited to:
 - i. Identifying any key process steps the Parties consider necessary for the Board to complete a thorough and timely assessment of the SOP;
 - ii. Need for, and preferences for the format, timing, and location of a potential Public Hearing to consider the Proposal;

- Any other matter of importance to the commenting party related to the Board's assessment of the SOP.

11. In response, QIA provided comments to NIRB in a letter dated April 6, 2023 which was later published on NIRB's public registry. Attached as **Exhibit B** to this affidavit is a copy of QIA's comments from April 6, 2023.

12. In our comments, QIA stated that NIRB should ensure that Inuit are engaged and heard from directly, and that impacts on Inuit are considered at every step of the reconsideration process.

13. QIA requested that an in-person Community Roundtable take place at which impacted communities could participate.

14. QIA specifically requested that this roundtable take place prior to the submission of Final Written Submissions by the Parties to NIRB, so that the significant Inuit oral evidence arising at the Community Roundtable could be properly reflected in the final submissions and recommended Project Certificate amendments submitted by all Parties.

Communication from the Government of Canada

15. While awaiting NIRB's direction regarding procedure for the SOP, QIA received correspondence from the Government of Canada in a letter dated April 11, 2023. Attached as **Exhibit C** is a copy of Canada's April 11, 2023 notification Letter.

16. In their notification letter, Canada highlighted the importance of the NIRB's processes and stated that they rely on the NIRB's assessment and associated proceedings to assist in discharging the Crown's Duty to Consult with Inuit and other Indigenous peoples.

17. Canada further noted that the Board processes provide potentially affected Inuit with an opportunity to learn about a proposed project and its potential impacts, express their views and any concerns they may have regarding potential impacts from the

proposed project on their asserted or established s. 35 rights, and to consider ways their concerns can be addressed.

18. Finally, Canada stated that, at the end of the Board's assessment processes, it will send a follow-up consultation letter to QIA that will seek its views on the Board's final Report and Recommendations, along with any outstanding concerns that may exist.

19. I was not surprised to receive this notification, because I know from my involvement in previous NIRB processes related to the Mary River Project that in practice, Canada has regularly relied on NIRB's regulatory processes to fulfill the evidentiary and procedural aspects of the Crown's constitutional duty to consult Inuit.

The NIRB's Procedural Order

20. On May 8, 2023, NIRB released its Procedural Order for the review of the SOP. Attached as **Exhibit D** to this affidavit is a copy of the May 8, 2023 Procedural Order.

21. NIRB's Procedural Order detailed the current procedure for written submissions in the SOP Review. This included the following steps:

- **Monday, June 26, 2023:** Designated Inuit Organizations, interested parties (including Intervenors who participated in the Board's previous assessments of the MRP (and subsequent modifications)), members of the public, and regulatory authorities will file with the Board their technical comments/final written submissions;
- **Tuesday, July 11, 2023:** Baffinland will file their replies to comments/final written submissions and the Proponent's final written submissions;
- **Wednesday, July 19, 2023:** Baffinland and Intervenors participating in the Community Roundtable in Iqaluit will file their presentation materials with the Board;
- **July 27-29, 2023:** The Board will conduct a Community Roundtable in-person in

Iqaluit with up to five designated Community Representatives from Arctic Bay, Clyde River, Grise Fiord, Igloolik, Resolute Sanirajak and Pond Inlet being present in-person in Iqaluit; and

- **August 1-2, 2023:** The Board will conduct a second in-person Community Roundtable in Pond Inlet for the Board to hear directly from interested members of the public in Pond Inlet.

Community Roundtables for the SOP Process

22. Despite QIA's request, the NIRB's Procedural Order does not allow for Parties to file written submissions after the Community Roundtables. NIRB's procedural order requires the Parties to file "final submissions" before the most important parts of the proceeding have taken place. There will have been no exchange of technical comments, answers to questions, or sharing of Inuit oral evidence prior to the deadline for submitting these "final" submissions.

23. As the DIO responsible for representing Inuit interests and protecting Inuit rights in the Qikiqtani region, QIA has an obligation to ensure that concerns about impacts on Inuit rights and the appropriate accommodation to mitigate those impacts are properly addressed in this review process. QIA understands that it must listen to and reflect what impacted Inuit are saying about project impacts, mitigation options and monitoring needs.

24. In a more typical process, the Board's processes would include a public hearing, an exchange of Information Requests and a variety of opportunities to engage with impacted communities. However, due to the expedited nature of these proceedings, it has been very difficult for QIA to engage with the impacted communities to the extent that we want to. The short timelines associated with these hearings, and the near constant flow of regulatory activity by Baffinland at NIRB has caused ongoing challenges for QIA in this respect. I have also heard from representatives of Hunters and Trappers Organizations and Hamlets that the regulatory burden has created difficulties for them to engage meaningfully on these issues as well.

25. An example of how the expedited proceeding and short timelines have adversely affected Inuit, and QIA's ability to engage meaningfully with Inuit, can be seen in the letter recently filed by the Igloodik HTA with NIRB. I received a copy of that letter, and immediately had two serious concerns. A copy of that letter is attached to my affidavit as **Exhibit F**.

26. First, I noticed that the Igloodik HTA seems to have misunderstood the SOP application as requesting permission for operational flexibility "to truck up to Milne port of additional 10% of iron ore per year." I know that the SOP actually is asking for operational flexibility to ship ore left at Milne Port in the previous year, and that the cap on trucking to Milne Port will remain at 6mtpa. The short timelines and the fact that this proceeding does not include any exchange of technical comments, information requests or questions, and the fact that opportunities for communities to participate orally will not take place until the very end of the process, all contribute to the challenges I have discussed in this affidavit with facilitating meaningful Inuit participation.

27. Second, I noticed that Igloodik HTA members "are out on the land from June to August for harvesting/camping...". I have reached out to Igloodik HTA to find out whether this means that they will not be available to attend the CRT, but have not heard back by the time I affirmed this affidavit. Even if Igloodik HTA members are able to attend, the fact that they will be on the land engaging in the practices that we are trying to protect, means that they (and other Inuit who will be similarly on the land during the summer) will not have a reasonable amount of time to prepare to engage with QIA, Baffinland and NIRB on the SOP.

28. QIA supports Inuit who are exercising their rights. Ensuring those practices continue is one of the most important obligations of QIA, and QIA will not force Inuit to choose between engaging their traditional practices versus attending regulatory meetings. The expedited and compressed timeline of the SOP review have made those choices inevitable.

29. Key evidence on matters related to the SOP will be presented by Inuit orally at the Community Roundtables. It will include information influenced by the lived

experiences of the Inuit and Inuit Qaujimagatuqangit, both of which are integral to QIA's written submissions.

30. In addition, the Community Roundtables are also an important source for technical information. They are often a forum where new technical information is added to the record in response to questions from the community, and where proponents will often provide supplemental written technical evidence in response to questions.

31. As a result of the design of NIRB's current process, the written submissions which my team and I will be preparing, and which will be submitted by QIA, would be unable to account for new technical information and information provided by Inuit orally during the Community Roundtables. As a result, those submissions would be based on an incomplete record that, depending on what is raised at the Community Roundtable, may also be inaccurate.

The Submission of Written Comments During the Phase 2 Review Process

32. During the Phase 2 Development Proposal ("Phase 2") review process, we similarly asked NIRB to make a decision regarding the submission of supplemental materials after Community Roundtables.

33. After receiving an updated schedule for the review process, QIA brought a motion on January 26, 2021 to allow for supplemental final submissions to be filed one week after the conclusion of oral evidence in the Community Roundtables. Baffinland would then be permitted to file a response within 5 days of the deadline for supplemental final submissions.

34. As a result of QIA's motion and additional comments received from other Parties, the NIRB released an updated Agenda on March 26, 2021. Attached as **Exhibit G** to this affidavit is a copy of the March 26, 2021 Agenda.

35. As a part of the Agenda, the NIRB informed the Parties that the Community Roundtable would end on April 21, 2021. The Parties would then be permitted to file written closing statements to the Board by May 6, 2021, with Baffinland having the

ability to submit their written closing statement by May 13, 2021.

36. Due to the additional time provided after the close of Community Roundtables for written submissions, QIA's was able to incorporate the evidence shared by Inuit in that process, into its submissions.

Experiences From the Production Increase Proposal Renewal Process

37. In contrast with the 2021 process for Phase 2, a different approach was taken by NIRB during the "Production Increase Proposal Renewal" project proposal ("PIP Renewal") by Baffinland. Attached as **Exhibit H** to this affidavit is a copy of the NIRB's Notice and Procedural Guidance for the PIP Renewal dated July 19, 2022.

38. During the PIP Renewal, Baffinland was seeking to continue the transportation and shipping of up to 6 Mt/a of iron ore through Milne Inlet for one additional season while the decision-making process for the Phase 2 Development Proposal was completed.

39. The Procedural Guidance provided by the NIRB included a deadline of August 9, 2022 for written technical comments and submissions from interested parties, with a "hybrid" one-day informal Community Roundtable session taking place on August 16, 2022. The roundtable would focus solely on collecting oral comments from the communities.

40. In response to the Procedural Guidance, I sent a letter on behalf of QIA to NIRB on July 22, 2022 requesting that a short extension of three days be granted to QIA and the Nunavut Tunngavik Incorporated ("NTI"), the two DIOs involved in the proceeding. This would result in the DIO comments being due on August 9, 2022. Attached as **Exhibit I** to this affidavit is a copy of the July 22, 2022 letter.

41. In the letter, I explained that the short extension would allow for the DIOs to incorporate feedback we received from Hunter and Trapper Organizations ("HTOs") at a meeting that we had arranged for August 4, 2022. This date marked the earliest time that was possible to arrange a meeting within the tight timeframes for the PIP Renewal

process and only two days before the NIRB submission deadline.

42. NIRB denied this request in an email dated July 25, 2022, but later partially relented and granted an extension on technical comments to August 11, 2022. However, NIRB did not agree to our request that the DIOs be able to submit “follow up written submissions after the oral evidence... on August 16”. Attached as **Exhibit J** to this affidavit is a copy of July 26, 2022 emails between myself and the Executive Director of NIRB.

43. As a result of the NIRB’s denial of the request for us to submit follow up submissions after the oral evidence, there were no opportunities for the DIOs to incorporate information into their submissions that reflected the views of impacted communities or from the Community Roundtable.

44. After the conclusion of the PIP Renewal Process, these deficiencies in the NIRB process meant that we had to resolve several outstanding issues with the proposal, and its impacts on Inuit rights, through the Section 35 consultation process. Several additional commitments were added to the Project Certificate’s Terms and Conditions that were not discussed with the NIRB when it made its original report and recommendations.

45. Based on my past involvement in NIRB processes, I expect that when new concerns are raised at the Community Roundtables during the SOP Review, it will lead to a similar situation where we will have to deal with unaddressed concerns after the NIRB process is completed through the Section 35 consultation process.

46. I understand that NIRB has the discretion to change its procedures on the go and could potentially allow for final submissions later in the process if it believes new information is shared at the CRTs which require a response. However, QIA’s internal administrative and decision-making processes cannot turn on a dime, and the governance challenges associated with changing the procedure at the last minute would be severe.

Prejudice to QIA

47. Conducting regulatory steps that involve the collect on of evidence from Inuit about impacts to Inuit rights resulting from Baffmland's application, after the last opportunity for QIA to make substantive submissions has passed, increases the already substantial burden on QIA to ensure that it is fully and meaningfully engaging with Inuit who are impacted by the project.

48. For QIA and the Inuit who we represent, the Community Roundtables are not just a chance for Inuit to share their vews before NIRB goes off to make its decision. QIA views the Community Roundtables as a crucial evident ary step in the regulatory process, without which the decision could not be reasonably made.

49. QIA considers the evidence, including the hurt Qaujimajatuqangrt shared by those in attendance, to be just as important, if not more important, than the technical evidence contained in Baffmland's actual application. It is inconsistent with our responsibilities to Inuit for our final submissions to be able to reflect only on Baffmland's technical information, and not the hurt community knowledge.

50. I make this affidavit in support of QIA's motion to allow for supplementary submissions after the Community Roundtables, and for no other purpose.

SWORN BEFORE ME at Iqaluit,)
Nunavut, on the 31st day)
of May, 2023.)



A Commissioner for taking Affidavits in)
and for the Nunavut Teritory)


JARED OTTENHOF

This is **Exhibit “A”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*



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 Intervenors 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:
 - o Identifying any key process steps the Parties consider necessary for the Board to complete a thorough and timely assessment of the SOP;
 - o 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 Ehaloak, 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 Ivalu, 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

This is **Exhibit “B”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*



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The outcome suggested by these studies – that the Mary River Project has only ever had positive cumulative effects, or non-significant negative effects – is not supported by the reality on the ground observed by Inuit, nor is it consistent with the conclusions shared by both Inuit Qaujimajatuqangit and western science (and accepted by NIRB in its Phase 2 Proposal Reconsideration Report). As wildlife populations plummet and the impact of dust grows, a broader analysis of the project’s impacts, taking a truly cumulative approach, is needed.

A meaningful cumulative effects assessment, based on a cumulative effects definition agreed to by the key parties (and which at a minimum reflects NIRB’s own guidelines for cumulative effects assessment), and a methodology jointly developed by NIRB, Baffinland, QIA and Canada, must be part of a regulatory review of the Mary River Project.

This is particularly critical in view of the recent recommendation from the Nunavut Planning Commission that Amendment 1 to the North Baffin Region Land Use Plan (to allow the Steensby transportation route) that the cumulative effects issues related to the Amendment can be dealt with in a NIRB process. QIA recognizes that a shorter term SOP process may not be the appropriate forum for a comprehensive review of this type (which must also integrate the work still underway on the Inuit Stewardship Plan, which QIA and Baffinland committed to complete by April 2024, pursuant to the commitments in Appendix B to the Project Certificate).

Balancing the interests of all parties to reduce the administrative and regulatory burden caused by the Mary River Project with the need to ensure that a comprehensive review on certain key issues is conducted, QIA encourages NIRB to consider how the current SOP process is related to the need for a subsequent and broader re-update to the relevant environmental impact management for the Mary River Project.

SUMMARY

QIA thanks NIRB for the opportunity to comment on the appropriate scope and process for review of the 2023 SOP. The 2023 SOP, unlike previous ‘short term’ production increase proposals, is not linked to a longer term application for expansion or change of the Project that ensures that another NIRB process is underway to address longer term and larger monitoring and adaptive management needs for the Mary River Project. QIA respects that NIRB’s current regulatory schedule and workload will affect how quickly this review can occur, and asks that regardless of the timeline, NIRB ensure proper opportunities for full (and in person oral) participation by the impacted Inuit communities, and a process that considers how larger picture and longer term environmental management concerns (as



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Sanikiluaq

expressed in NIRB’s findings on current Project impacts in its Phase 2 Reconsideration Report) will be addressed.

Sincerely,

Jared Ottenhof
Director, Lands and Resource Management

This is **Exhibit “C”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*



April 11, 2023

Jeremiah Groves, Executive Director
Qikiqtani Inuit Association
P.O. Box 1340
Iqaluit, NU X0A 0H0

Kilikvak Kabloona, Chief Executive Officer
Nunavut Tunngavik Incorporated
P.O Box 638
Iqaluit, NU X0A 0H0

Via Email: jgroves@qia.ca; KKabloona@tunngavik.com

Notification Letter for Baffinland Iron Mines Corporation’s “Sustaining Operations Proposal” (Project Certificate No. 005)

Ullukkut Jeremiah Groves,

The Northern Projects Management Office (NPMO) is writing to you, on behalf of the Government of Canada, regarding Baffinland Iron Mines Corporation’s (the Proponent) Sustaining Operations Proposal (the Project). The Project proposes amendments to the approved Project Certificate No. 005 and the Nunavut Impact Review Board (the Board) has requested input on the Project proposal. This letter provides the Qikiqtani Inuit Association (QIA) and Nunavut Tunngavik Incorporated (NTI) with an overview of the Government of Canada’s approach to consultation and participation in the Board’s process.

Project Proposal Context

On March 21, 2023, the Board received correspondence from the Nunavut Planning Commission indicating that the current Project application remained within the parameters of the February 2, 2023 conformity determination, and on March 23, 2023 the Board determined the Project application was complete. Presently, the Board is seeking input from regulators and interested parties on their assessment process for the Project. The Board’s request for comments and Project details are available on the [public registry](#) (NIRB File No: 08MN053, Project No. 125767).

Government of Canada’s Role in the Board’s Process

The responsible Ministers with jurisdiction for authorizing the Project to proceed, and with decision-making authority for the assessment, are: the Minister of Northern Affairs; the Minister of Fisheries, Oceans and the Canadian Coast Guard; the Minister of Natural Resources; the Minister of Environment and Climate Change; and, the Minister of Transport.

The Canadian Northern Economic Development Agency’s NPMO will act as the Crown Consultation Coordinator. NPMO will coordinate the Government of Canada’s participation in the assessment process, and support the Crown’s efforts to hear, understand, and be responsive to issues raised by Inuit. Qikiqtani Inuit Association (QIA) and Nunavut Tunngavik Incorporated (NTI) are the Designated Inuit Organizations representing collective Inuit rights in respect to the Project. Canada also acknowledges the key role played by various other Inuit stakeholders, such as the Hunters and Trappers Organizations and the Regional Wildlife Organization, in understanding the potential impacts of the Mary River Project.

Crown-Indigenous Relations and Northern Affairs Canada may make available participant funding through the Northern Participant Funding Program. The intent of such funding is to provide resources to facilitate meaningful participation in the Board’s assessment process. A call for applications will be shared through the Board’s public registry, as applicable.

Government of Canada's Reliance on, and Participation in, the Board's Process

The Government of Canada relies on the Board's assessment process and associated proceedings to assist in discharging the Crown's duty to consult with Inuit and other Indigenous peoples. The Board's process provides potentially affected Inuit with an opportunity to learn about a proposed project and its potential impacts, express their views and any concerns they may have regarding potential impacts from the proposed project on their asserted or established s. 35 rights, and to consider ways their concerns can be addressed. Through their participation in the Board's process, Inuit help to ensure that their perspectives are considered by the Board and ultimately by the responsible Ministers.

The Government of Canada actively participates throughout the Board's assessment process to better understand Inuit concerns. The Government of Canada also provides technical and regulatory expertise related to the Project's potential impacts and possible mitigations through the development of commitments and Terms and Conditions of the Project Certificate. The Board's Report and Recommendations, along with Canada's consideration of concerns and potential mitigation measures, are used to provide federal decision-makers with the information needed to assess the adequacy of Crown consultation prior to making a Ministerial decision.

After the Board's assessment process has concluded, the Government of Canada will send a follow-up consultation letter to QIA and NTI. This letter will seek QIA/NTI's views on the Board's Report and Recommendations, as well as any outstanding concerns that may still exist. It is our understanding that the views of impacted Inuit who participate in the Hunters and Trappers Organizations, as well as other Inuit whose s. 35 rights are affected by the Project, will be reflected in the QIA/NTI's submission. Responses to the follow-up letter help the Government of Canada determine whether the duty to consult has been met, and if potential accommodations and mitigations of impacts to s. 35 rights are sufficient before making a Ministerial decision. Following the Ministerial decision, NPMO sends a letter on behalf of the Government of Canada that outlines the responsible Ministers' reasons for decision and highlights any potential accommodation measures, where relevant.

If you have any questions about the information outlined in this letter, please contact Kaitlyn Bakker, A/Senior Project Manager at kaitlyn.bakker@cannor.gc.ca or 867-765-8057.

Sincerely,



Lisa Dyer
Director General
Northern Projects Management Office
Canadian Northern Economic Development Agency

c.c.

Terry Audla, Regional Director General, Nunavut Region, Crown-Indigenous Relations and Northern Affairs Canada

Tom Hoggarth, Regional Director, Ecosystems Management, Fisheries and Oceans Canada, Central and Arctic Region

Mary Taylor, Director General, Environment Protection Operations Directorate,
Environment and Climate Change Canada

Greg Carreau, Director General, Safe Environments Directorate, Health Canada

Rinaldo Jeanty, Associate Assistant Deputy Minister of Lands and Mineral Sector, Natural
Resources Canada

Christine Wan Jones, Regional Director, Programs, Prairie and Northern Region,
Transport Canada

Jenna Boon, Field Unit Superintendent, Nunavut, Parks Canada

Jarred Picher, Director, Natural Resource Management Branch, Parks Canada

James Qillaq, Chair, Qikiqtaaluk Wildlife Board

Paul Nagnalik, Chair, Hall Beach Hunters and Trappers Association

David Irgnaut, Chair, Igloolik Hunters and Trappers Organization

Joelie Qamanirq, Chair, Ikajutit Hunters and Trappers Association

David Qamaniq, Chair, Mittimatalik Hunters and Trappers Organization

Apiusie Apak, Chair, Nangmoutaq Hunters and Trappers Association

Karen Costello, Executive Director, Nunavut Impact Review Board

This is **Exhibit “D”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*



NIRB File No.: 08MN053
NPC File No.: 149829

May 8, 2023

To: The Honourable Dan Vandal, P.C., M.P.
Minister of Northern Affairs
House of Commons
Ottawa, ON K1A 0A6

Megan Lord-Hoyle
Vice President,
Baffinland Iron Mines Corporation
2275 Upper Middle Rd E Suite. 300
Oakville, Ontario, L6H 0C3

Lou Kamermans
Senior Director, Sustainable Development
Baffinland Iron Mines Corporation
2275 Upper Middle Rd E Suite. 300
Oakville, Ontario, L6H 0C3

Sent via email: dan.vandal@parl.gc.ca, megan.lord-hoyle@baffinland.com and
lou.kamermans@baffinland.com

Re: Notice and Procedural Guidance Regarding the Nunavut Impact Review Board's Assessment of Baffinland Iron Mines Corporation's "Sustaining Operations Proposal" Project Proposal

Dear Honourable Dan Vandal, Megan Lord-Hoyle and Lou Kamermans:

The purpose of this correspondence is to provide notice to the Minister of Northern Affairs and the Proponent as required under s. 112(3) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*) that the Nunavut Impact Review Board (NIRB or Board) is initiating a formal reconsideration of the terms and conditions of Project Certificate No. 005 in light of Baffinland Iron Mines Corporation's (Baffinland or Proponent) submission of the "Sustaining Operations Proposal" project proposal (SOP or Proposal), a proposed two-year amendment (to December 31, 2024) to the approved Mary River Project (NIRB File No.: 08MN053). In addition to providing the formal notice of the Board's reconsideration, in light of Baffinland's Application, the comment submissions received by the Board regarding the SOP and process for the NIRB's reconsideration and the correspondence from the Federal Responsible Minister received by the Board on April 21, 2023, all highlighting the priority and time sensitivity of the Board's assessment of the Proposal, the Board is also taking this opportunity to issue important procedural guidance to all parties wishing to participate in the Board's reconsideration process for the SOP.

The Board highlights the following key dates of interest to participants (more details of the process steps follow under the heading Procedural Guidance):¹

- On or before **Friday, May 19, 2023**, the Board completes its conformity check of Baffinland’s Final Environmental Impact Assessment (FEIS) Addendum associated with the SOP and circulates the FEIS Addendum to interested parties and the public for technical review;
- **On or before Monday, June 26, 2023**, the 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 file with the Board their technical comments/final written submissions in respect of the SOP and FEIS Addendum;
- **On or before noon (12:00 pm) MDT on Tuesday, July 11, 2023**, Baffinland files their replies to comments/final written submissions and the Proponent’s final written submissions in respect of the SOP and FEIS Addendum with the Board;
- **On or before noon (12:00 pm) MDT on Wednesday, July 19, 2023**, Baffinland and Intervenor participating in the Community Roundtable in Iqaluit are invited to file their presentation materials with the Board (the Board has allotted 30 minutes for Baffinland’s presentation at the start of the Community Roundtable, and for the Community Roundtable session in Iqaluit, the Board has allotted 10 minutes for each Intervenor who wishes to present a summary of their comment submissions about the SOP and FEIS Addendum to the Community Roundtable delegates present during the Iqaluit session);
- **On July 27-29, 2023**, the Board will conduct a Community Roundtable **in-person in Iqaluit** with up to five designated Community Representatives from Arctic Bay, Clyde River, Grise Fiord, Igloolik, Resolute Sanirajak and Pond Inlet being present in-person in Iqaluit; and
- **On August 1-2, 2023**, between **9:00 am – 5:00 pm EDT** (and a possible evening session between **6:30-9:00 pm EDT** planned for **August 1**) the Board will be present to conduct a second in-person Community Roundtable in Pond Inlet for the Board to hear directly from interested members of the public in Pond Inlet.

Please note: As the focus of the in-person Community Roundtables in Iqaluit and Pond Inlet is to provide communities with an opportunity to share their knowledge, provide comments and ask questions in an oral format, the Board is not providing the option of remote access during the Community Roundtable.

PROCEDURAL HISTORY OF THE PRODUCTION INCREASE PROPOSAL RENEWAL

In late 2022 and early 2023 Baffinland met with several of the potentially directly affected communities and indicated their plans to submit an application to the Board to authorize the continued trucking and shipping of up to 6 million tonnes per year (Mt/a) of iron ore. On February 2, 2023, the Board received a positive conformity determination from the Nunavut Planning Commission (the Commission or NPC) regarding Baffinland’s “Sustaining Operations Proposal” (SOP or Proposal). In the Commission’s correspondence, the Commission noted that the SOP

¹ While the Board will make every effort to follow these timelines, parties and the public should be aware that the Board reserves the right to modify timelines to respond to circumstances such as logistical constraints, regulatory orders, the failure of parties to provide materials in compliance with the Board’s timelines, etc.

represented a “significant modification” to the previously approved Mary River Project and forwarded Baffinland’s request for modifications to Project Certificate No. 005 to the NIRB for further consideration.

After this conformity determination, Baffinland continued consultation with the QIA and further modified the Proposal to include a shorter two-year timeframe for the SOP and submitted an online application to the Board on March 16, 2023. On March 21, 2022, the NIRB received correspondence from the NPC indicating that the current application remained within the parameters of their February 2, 2023, conformity determination and still constituted a significant modification. After confirming that the application was complete, on March 23, 2023, the NIRB circulated the SOP Application to seek input from Regulators and interested parties in respect of several matters, including comments on the scope of the Proposal and timing and process for the Board’s assessment of the SOP.

On or before April 12, 2023, the following parties provided comments:

- The Hamlet of Sanirajak (Doc ID No. 344120);
- The Hamlet of Clyde River (Doc ID No. 344121);
- The Hamlet of Igloolik (Doc ID No. 344122);
- The Mittimatalik Hunters and Trappers Organization (MHTO) (Doc ID No. 344123);
- The Government of Nunavut (GN) (Doc ID No. 344124);
- The Government of Canada (GoC) (Doc ID No. 344125);
- The Hamlet of Pond Inlet (Doc ID No. 344126 & 344127);
- The Igloolik Hunters and Trappers Association (Igloolik HTA) (Doc ID No. 344128);
- The Ikajutit Hunters and Trappers Association (Ikajutit HTA) (Doc ID No. 344129);
- The International Union of Operation Engineers Local 793 (IUOE Local 793) (Doc ID No. 344130 & 344132);
- The International Union of Operation Engineers (IUOE Parent Organization) (Doc ID No. 344131);
- Nunavut Tunngavik Incorporated (NTI) (Doc ID No. 344133 & 344134);
- Oceans North (ON) (Doc ID No. 344135 & 344138);
- The Qikiqtani Inuit Association (QIA) (Doc ID No. 344136);
- The Sanirajak Hunters and Trappers Association (Sanirajak HTA) (Doc ID No. 344138);
- and
- The Hamlet of Arctic Bay (Doc ID No. 344184).

For the convenience of reviewers the Board has attached a summary by topic of the comments received in the section entitled “Parties’ Comments” in [Table 1](#) below. Parties are advised the summary table is not exhaustive. The full documents are available in their entirety as posted on the NIRB’s Public Registry from the following link: www.nirb.ca/project/125767 and searching the NIRB Document ID No. provided.

THE SCOPE OF THE SUSTAINING OPERATIONS PROPOSAL

Baffinland’s SOP proposes continued mining, trucking, and shipping of iron ore to market by the Tote Road and through Milne Inlet for an additional two (2) years (expiring in December 2024). These activities were previously approved under the Production Increase Proposal (Amendment #2), the Extension Request to the Production Increase Proposal (Amendment #3) and the Production Increase Proposal Renewal (Amendment #4).

Baffinland’s justification for maintaining the 6 Mt/a level of ore transport along the Tote Road is that this level 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 when the 4.2Mt/a limit is reached, which would result in significant reductions in employment. 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
- Modifying the shipping rate to allow for greater “Operational flexibility” that would increase the maximum shipping rate under the SOP when extenuating circumstances from the previous year result in ore stranding on the ore pad at the end of the previous 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). Operational flexibility would not affect the ore transportation limits for the Tote Road, which remain at 6 Mt/a, ensuring that if Baffinland applies operational flexibility to the shipping limits in a given year, that any shipping above 6.0 Mt/a would be limited to the excess ore stranded on the storage pad from the previous year. Even in a year where this operational flexibility applies, Baffinland has committed to using no more than a total of 84 ore carriers in any given year.

Baffinland indicated that it views the Sustaining Operations Proposal (SOP) as a means of continuing to maximize ore production while determining the future of its operations. Over the past several years of operations, Baffinland has implemented increased efficiencies leading to an ability to reach ore transportation and shipping limits earlier in the season. Baffinland views this increase in tonnage limits to be essential to its future in order to avoid laying off employees when the 4.2 MT/a tonnage limits are reached, maintaining the financial benefits to the Qikiqtani Region. Further, Baffinland has indicated that the SOP is needed to secure the necessary financing to complete the southern railway to Steensby as approved in 2012 under the original Mary River Project.

PARTIES’ COMMENTS

Notice of the Board’s receipt of the SOP Application was provided to regulators and interested parties on March 23, 2023. The Notice invited parties to provide comment and advice to the Board on the following:

- 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, 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.

Table 1: Summary of Comments from Regulatory Authorities, Inuit Organizations and Community Organizations

Parties	Scale & Scope	Terms and Conditions	Process Steps	Issues
NTI	The scale and scope of modification should extend beyond Term and Conditions 179 (a) and (b) because the context of this proposal is different than what has been previously applied for through Amendments 2,3 and 4	The potential impacts are broader than 179 (a) and (b) noting that the additional Terms and Conditions for the PIPR in 2022 were included in response to Inuit concerns regarding impacts of operations on Inuit rights, terrestrial and marine ecosystems.	The previous PIP, and the Extension to the PIP were in writing, and PIPR provided opportunity for online participation linked to Pond Inlet. This was a compromise because of tight timeframe needed for decision. The Nunavut Agreement requires "due regard and weight to the tradition of Inuit oral communication and decision-making" therefore a reconsideration should allow for all affected community intervenors to participate on an in-person basis facilitating the collection of information and evidence orally and require information sessions and in-person CRT, with other	As Baffinland is proposing up to 84 ore carriers through the Northern Transportation Corridor until December 31, 2024, NIRB's assessment should consider Baffinland's previous PIPR commitment to reduce maximum ore carriers be reduced from the 86 initially proposed to 80 for the 2022 season, and provide clarity of impacts for ongoing operations.

Parties	Scale & Scope	Terms and Conditions	Process Steps	Issues
			aspects of the reconsideration conducted in writing.	
QIA	This is the first request for additional shipping to the North that has occurred without the Phase 2 Development Proposal either occurring simultaneously or waiting for a Ministerial Decision.	In addition to 179 (a) and (b) it must consider additional terms and conditions in the PC i.e. 183-185 in reference to the marine environment but not limited to these.	There should be an in-person community roundtable where all impacted communities can participate, and which occurs prior to final written submissions so that parties can fully include the community perspectives in their submissions. A Technical Review period should also be required to allow for adequate assessment of the proposed activities (may be hybrid technical meeting, written information requests, or combination)	Inuit should be engaged. Important for NIRB recommendation by August 2023 A cumulative effects assessment grounded in the reality of the proposal is required during this and subsequent assessments.
GN	No concerns and supports an expedited review'	While it considers activities to be within previously approved project; with additional PC Term and Condition from 2022 process, recommends changes to terms and conditions be 179 (a) and (b) to Dec. 31, 2024.	Request an expedited review process.	Asking for the same options as was done for 2022 PIPR including CRT in Pond to be done by August 2023. They are also looking for certainty beyond 2024 to resolve previous technical issues.

Parties	Scale & Scope	Terms and Conditions	Process Steps	Issues
GOC	Other than definition of operational flexibility, consider activities within the scale and scope of previously approved activities.	At minimum 179 (a) and (b) should be included in the assessment; however, there has not been sufficient time to assess effectiveness of the other terms and conditions added under the PIPR and the new mitigations. There should be flexibility to consider revisions or additions to the PC.	The GoC understands importance of meaningful participation of Inuit within the assessment and notes a condensed format may be suitable given the proposed scope of the project, and existing extensive record of evidence for previous assessments.	List of documents noting declining narwhal abundance provided (appendix) Requesting clarification on how the definition of operational flexibility fits with previous commitments (commitments requiring 80 ships max, where current operational limit requested is 84). Requests additional information on how operations will continue beyond 2024
Hamlet of Pond Inlet			Encourages the NIRB to complete a process as soon as possible to ensure that a recommendation on approval is made no later than the beginning of August 2023	Supports the 6MT shipping - resolution number 02-12-2023-20
MHTO	While these activities are generally within the scope of what has been previously proposed, these have been short-term proposals thus far. A longer temporal	All terms and conditions within PC must be considered to apply to the SOP, not limiting changes to T&C 179 (a) and (b).	Notes the need for a full reconsideration including information requests, technical review comments, PHC in-person in Pond Inlet for Inuit of affected communities to convene and present on issues and comments, PHC	MHTO not supportive of undertaking additional impact assessment for 2-year span of activity as Baffinland has applied to the Commission for life of project shipping via Northern route.

Parties	Scale & Scope	Terms and Conditions	Process Steps	Issues
	assessment has not been conducted especially considering the PIP was not approved by NIRB in 2018.		follow up, with Hearing in October to address ongoing reality of impacts by progressive, short term, ongoing renewal processes. This is required to allow full participation of the community in providing input on ongoing renewals.	<p>Reiterating that initial PIP in 2018 had not been approved by NIRB due to lack of certainty in impacts which are issues that have not been addressed to date.</p> <p>Highlighting the need for a cumulative effects assessment, as this ongoing renewal process is a form of project splitting.</p>
Hamlet of Igloolik				Support SOP with conditions related to: additional baseline for marine and terrestrial wildlife at Steensby, all communities get matching benefit to Pond Inlet with additional shipping benefits to Sanirajak, Igloolik and Pond Inlet for shipping impacts, and Baffinland continue community consultation
Igloolik HTA	Do not support as communities do not have sufficient time to review application			Do not support as communities do not have sufficient time to review application.
Hamlet of Sanirajak	Views the 6MT project as status quo; supported 12MT shipping under Phase 2 and supports 6MT	Notes that the only changes required would be the same ones that were previously made	With the extensive review of Phase 2, and the current 6MT as maintaining the status quo, there is serious doubt that NIRB is	Sanirajak has a greater percentage of the population working at Mary River, and anything that could put those jobs at risk,

Parties	Scale & Scope	Terms and Conditions	Process Steps	Issues
		<p>to allow the trucking and shipping to increase from 4.2-6MT. e.g., 179 (a) and (b).</p>	<p>going to learn any new information that would better inform the Board in its deliberations on the matter.</p> <p>Suggest NIRB limit its review to areas of concern and the actions of BIM to resolve those concerns rather than another full assessment of their entire operation.</p> <p>Feels a full technical review is not required, and that NIRB would be able to collect the information it needs to make an informed decision on the SOP by holding a community meeting which should occur as soon as possible to allow the Board to make its decision no later than July 31, 2023, and be located in Pond Inlet (interested parties to attend virtually as was done for the Phase 2 hearings)</p>	<p>including an unnecessarily long process to determine the outcome of the SOP, is of serious concern to the Council and residents of the community.</p> <p>Due to the capital investment to develop Steensby, it is necessary to demonstrate an ongoing viable project, and if Steensby was not developed, then the communities would not see the benefits such as daycares, community garages, office buildings, and training centers.</p> <p>Operations at Mary River will benefit Canadian priorities and global demand for steel products.</p>
Sanirajak HTA	Same letter as Municipality of Igloolik			Support SOP with conditions related to: additional baseline for marine and terrestrial wildlife at Steensby, all communities get same benefits as Pond Inlet

Parties	Scale & Scope	Terms and Conditions	Process Steps	Issues
				with additional shipping benefits to Sanirajak, Igloolik and Pond Inlet for shipping impacts, and Baffinland continue community consultation
Ikajutit HTA - Arctic Bay			Encourage dialogue during the NIRB process	
Oceans North	<p>Provided the NAMMCO report noting the decline of narwhal and support the need for a full environmental review of SOP.</p> <p>Concerned that these ongoing short timelines and shortened assessments will continue same cycle as previous extension requests.</p>	179 (a) should clarify the maximum tonnage of ore that would potentially remain at the end of a shipping season.	<p>Processes and format be centered around the needs of the Mittimatalik community and include a Public Hearing.</p> <p>Precautionary principle requires SOP to undergo a full review as well as immediately decrease vessel traffic and impacts to the Eclipse Sound narwhal population.</p>	<p>The seriousness of the Eclipse Sound narwhal decline warrants a considered effort by all partners to break out of the continued cycle of playing “catch up” to pre-existing promises that have been made by the proponent and the working groups.</p> <p>Oceans North does not foresee the Marine Environmental Working Group having the capacity to make the recommendations it is required to make for the SOP commitments to come to fruition in the 2023 season.</p> <p>Switching vessel sizes and associated changes to noise are unknown and must be assessed especially with links to Inuit rights, and a full</p>

Parties	Scale & Scope	Terms and Conditions	Process Steps	Issues
				review of cumulative effects.
IUOE Local 793			Process completed before end of August 2023; support process undertaken last year	Nunavut-based employees support approval of SOP; requests Intervenor status
IUOE (Parent Organization)				Support SOP and employment continuing at the Mary River Project.
Hamlet of Arctic Bay	Notes that the scale and scope of the proposal is similar to that of previous years and has been assessed through previous proposals.		A full review may not be necessary but community meetings would allow the Board to collect valuable input from communities.	The Hamlet of Arctic Bay supported previous proposals by Baffinland and continues to support the Project through the SOP.

On April 21, 2023, the Minister of Northern Affairs sent correspondence¹ addressed to the NIRB’s Chairperson. The Minister’s correspondence was provided on behalf of the federal Responsible Ministers in accordance with s. 114 of the *NuPPAA*. The Minister advised that if the Board were to determine that the SOP warrants a reconsideration of Project Certificate No. 005, that:

While the responsible ministers are aware of the other ongoing assessments before the Board, we are requesting that the Board prioritizes the reconsideration of the Sustaining Operations Proposal in a manner that considers the existing information along with all Parties’ input. The responsible ministers understand that the Sustaining Operations Proposal is intended to maintain operations, employment and the delivery of associated benefits to Qikiqtani Inuit while Baffinland proceeds with long-term planning in relation to the Mary River Mine. Given the time-limited nature of the Sustaining Operations Proposal and the extensive record of evidence available, the responsible ministers are of the view that Baffinland’s proposed timeline is reasonable and that the integrity of the process envisioned under the Nunavut Agreement and the Act

¹ NIRB Doc. ID No: 344411.

would be maintained for an assessment scoped to the proposed changes and related commitments.

The responsible ministers support the Parties' requests for an in-person community round table to ensure that impacted Inuit have opportunities for fulsome participation, including the provision of oral evidence. We are of the view that this process step can be accommodated within the proposed time frame.

The comments received from regulatory authorities, Inuit organizations and other parties and the Minister's direction provided under s. 114 of the *NuPPAA* were considered by the Board to decide whether a reconsideration is warranted based on the scope of the SOP, and also to develop the procedural guidance that follows.

THE BOARD'S ANALYSIS OF WHETHER A RECONSIDERATION IS WARRANTED

In general, where an approved project is already governed by the terms and conditions of a NIRB Project Certificate, to determine the process and procedure guiding NIRB's assessment of any modification proposal the Board must consider the following questions:

- Was the proposed modification included within the scope of the original project (and subsequent modifications) as previously assessed by the NIRB?
- Is the proposed modification consistent with the terms and conditions of the existing NIRB Project Certificate, or are changes to the Project Certificate necessary to reflect the modification?
- Does the proposed modification constitute a significant modification to the original project that is integrally linked to the original project (including as subsequently modified under any modification proposals that have been assessed and approved by the NIRB)?
- Does the proposed modification constitute a significant modification to the original project that is not integrally linked to the original project, and that has sufficient scope to be assessed as an independent project proposal?

Although there were a wide range of views regarding the need for additional assessment and the process that any additional assessment would follow, there was agreement regarding the following issues:

- The further extension of the 6.0 Mt/a transportation and shipping limits by two additional years is, as noted by the NPC in its referral to the NIRB, a significant modification to the Board's prior assessments; consequently, further assessment of the SOP by the NIRB is warranted;
- Terms and Conditions 179 (a) and (b) of Project Certificate No. 005 must be revised if the SOP activities were to be allowed to continue until 2024;
- Since the Board considered the Production Increase Proposal Renewal (PIP Renewal) in 2022, some additional information has been generated about transportation and shipping at the 6 Mt/a level, such as dust mitigation efforts associated with the Inuit-led dust committee and Baffinland's marine mammal mitigation measures during shipping (e.g. ships travelling in convoys and speed reductions) that may be relevant;

- There may be new research available to the Board that is relevant to the assessment of potential effects of shipping on narwhal that was not available in previous assessments;¹
- Due to ice conditions in 2022, Baffinland was only able to ship 4.7 Mt/a of ore during the 2022 shipping season and a significant volume of excess ore that was trucked from the mine in 2022 remains in the ore stockpile at the port site; and
- With the 2023 shipping season approaching, Baffinland, several Hamlets, QIA, the Government of Nunavut, Baffinland’s Nunavut employees and unions (IUOE Local 793 and Main IUOE) identified the need for the Board to conclude the assessment and decision-making for the SOP on an urgent/expedited basis by August to provide certainty for workers, contractors and communities.

Further, the Board acknowledges that there has been a change in circumstances since the Production Increase Proposal Renewal (PIP Renewal) was approved by the Board in September 2022 because in the Responsible Ministers’ approval of the PIP Renewal, the Ministers varied 3 additional terms and conditions (49, 77 and 183) and added 6 new terms and conditions (185-189) to Project Certificate No. 005 that continue to govern the Mary River Project even after the December 31, 2022, expiry of the 6 Mt/a transportation and shipping limits. As summarized by the Responsible Minister, these additional amendments to the Project Certificate No. 005 came about as a result of consultations with the Qikiqtani Inuit Association and Federal Government Departments and were in relation to:

...improving the functionality of the Terrestrial and Marine Environment Working Groups; criteria for the commencement and closing of the shipping season; establishing hunters’ access routes; auditing dust impacts and establishing a program to identify high risk conditions for dust dispersion; and, ensuring proponent commitments are monitored and enforced.

In determining that the assessment of the SOP warrants a reconsideration, the Board considered the following factors to be relevant:

- Other than the request for “operational flexibility” to be incorporated into the shipping limit, the scope of activities in the SOP is the same as the scope of activities that have been carried out from 2018 to 2022;
- Although parties have indicated in general that they would like to see a broader consideration of terms and conditions beyond Terms and Conditions 179(a) and (b) (transportation and shipping limits), the Board has not identified that a change to the NIRB’s existing monitoring program for the current project is necessary for the SOP (particularly when the revisions to Project monitoring that were added by the Responsible Minister in Amendment No. 4, such as the role of the Interim Project Monitor are considered);
- The Board’s process for considering the original Production Increase Proposal in 2018, the Production Increase Extension Proposal in 2019 and the Production Increase Proposal Renewal in 2022 did not involve in person Technical Meetings, a Pre-Hearing Conference and/or Public Hearing—the original PIP did have a staff conducted Community

¹ For example, NAMMCO-North Atlantic Marine Mammal Commission (2022). Report of the Joint Disturbance Workshop of the NAMMCO Scientific Committee Working Group on the population status of narwhal and beluga in the north Atlantic, and the Canada/Greenland Joint Commission on conservation and management of narwhal and beluga Scientific Working Group. December 2022, Copenhagen, Denmark— Doc ID No. 344138.

Roundtable for a single day in Pond Inlet, the PIP Extension process consisted entirely of a written process (which parties had largely agreed to when the Public Hearing was suspended in November 2019) and the Board's consideration of the PIP Renewal last summer consisted of a written process for considering technical comments and a one-day Community Roundtable hosted in Pond Inlet, with community representatives from the other 6 communities participating remotely;

- There are logistical limits on accommodations available in Pond Inlet, such that there was little to no accommodation available in July, only limited accommodation available in early August, and the public venue for the Community Roundtable also has limited availability over the course of the summer due to cruise ship bookings; and
- In correspondence received on April 21, 2023, from the Minister of Northern Affairs, on behalf of the Responsible Ministers, the Minister:
 - directed the Board to consider the assessment of the SOP as a priority;
 - supported the Parties' requests for an in-person Community Roundtable to ensure that impacted Inuit have opportunities for fulsome participation, including the provision of oral evidence; and
 - indicated that funds from the Northern Participant Funding Program may be made available to support participation in the NIRB process.

Recognizing that there is a need to revisit the terms and conditions of Project Certificate No. 005 (179(a) and (b) specifically), and that there is some additional information that has been received by the Board since the Board's prior assessments of the PIP, the PIP Extension in 2019 and last year's PIP Renewal, the Board has determined that that the requirements for a reconsideration of the Project Certificate under the *Nunavut Agreement* Article 12, Section 12.8.2 and s. 112(1)(a) and (b) have been met:

112 (1) The Board may, on its own initiative or at the request of the designated Inuit organization, the proponent or any interested person, reconsider the terms and conditions set out in a project certificate that it has issued if

(a) the terms and conditions are not achieving their intended purpose or are having effects that are significantly different from those anticipated at the time the certificate was issued;

(b) the circumstances relating to the project are significantly different from those anticipated at the time the certificate was issued; or

On this basis, the Board has concluded that the modifications to activities proposed under the SOP do constitute a significant modification to the scope of the original Mary River Project (as amended by the Early Revenue Phase Proposal, the Production Increase Proposal, the Extension to the Production Increase Proposal and the Production Increase Proposal Renewal), and provide the following outline of the process and next steps to conduct the assessment of the SOP as a reconsideration.

NOTICE OF RECONSIDERATION

As indicated above, the Board has decided that as provided for under Article 12, Section 12.8.2 (a) of the *Nunavut Agreement* and s. 112(a) of the *NuPPAA* (changed circumstances) a

reconsideration of specified terms and conditions of Project Certificate No. 005 is required in light of the continuation of activities proposed in the “Sustaining Operations Proposal” project proposal (SOP or Proposal). As required by s. 112(3) of the *NuPPAA*, the NIRB is providing notice of a formal reconsideration of the terms and conditions of Project Certificate No. 005 to the Proponent and the Minister.

RECONSIDERATION PROCESS: NEXT STEPS

As stated in s. 112(4) of the *NuPPAA* the NIRB has the discretion to determine the appropriate process for the conduct of a reconsideration of Project Certificate terms and conditions that is appropriate in the circumstances of the specific proposal before the Board. The Board considered the process and timing comments of the parties, including the Minister’s direction under s. 114 as to priorities and timelines, seasonal and logistical constraints and the Board’s prior approach to the reconsiderations conducted by the Board for the Production Increase Proposal (PIP) and the Production Increase Proposal Extension Request (PIP Extension) and Production Increase Proposal Renewal (PIP Renewal) to develop the procedural guidance to govern the Board’s assessment of the PIP Renewal. The Board highlights the following considerations:

- With the exception of the request for “operational flexibility”, the activities requested in the SOP do not represent any change from the scope of activities that have been carried out from 2018 to 2022;
- The Board’s technical review of the original PIP (Project Certificate No. 005, Amendment #2) and the PIP Extension (Project Certificate No. 005, Amendment #3) and PIP Renewal (Project Certificate No. 005, Amendment #4) were conducted in writing; supplemented by a limited in-person community session in Pond Inlet that enabled residents to provide feedback to the Board;
- Designated Inuit Organizations, interested parties (including Intervenors 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 have previously provided the Board with thorough and extensive written submissions, some of which are likely relevant to the Board’s assessment of the SOP, and parties wishing to rely on existing relevant filings may simply reference their prior submissions and are not expected to duplicate their efforts;
- Some parties identified that the Board’s process should provide an opportunity for the collection of oral evidence from potentially impacted communities;
- Parties identified that conducting any in-person meetings in the potentially affected communities may be difficult as community members may be unavailable as they pursue activities on the land; and
- One party indicated that the reconsideration process should be a full assessment analogous to a review (including the requirement for the Board to conduct a full Public Hearing).

While the Board recognizes and acknowledges the urgency of the situation as mentioned by parties in their comments and the priority and timelines urged by the Minister in his correspondence, the Board is also aware of the considerable interest of the potentially affected North Baffin communities in the Proposal and the need for the Board to conduct a thorough assessment of the Proposal that incorporates information provided to the Board since the Board’s previous assessments of the prior PIP, the PIP Extension and PIP Renewal. Accordingly, the Board has

determined that the following process will support the Board's decision-making in respect of the SOP.

1. The process for soliciting and responding to technical comments on the SOP and FEIS Addendum will be confined to a **written process only** for Designated Inuit Organizations, Intervenors who participated in the Board's previous assessments of the Mary River Project (and subsequent modifications), and those regulatory authorities with jurisdiction over components of the Mary River Project. Once the NIRB determines that the FEIS Addendum submission has met the guidelines generally used for the Mary River project, these parties are invited to file their written comment submissions about the SOP on or before **noon (12:00 pm) MDT on Monday, June 26, 2023**. Written direction on suggested format will be issued with the NIRB update on Friday, May 19, 2023.
2. As Baffinland bears the onus of proof in respect of the SOP, Baffinland will have an opportunity to file a final reply to the comment submissions of interested parties and final written submissions in writing on or before **noon (12:00 pm) MDT on Tuesday, July 11 2023**.
3. Interested members of the public are also invited to submit written comments as noted in Item 1 above. However, recognizing the high level of community interest in the Proposal, and respecting Inuit oral traditions, the full Board also plans to supplement the written technical review process by conducting two in-person Community Roundtable (CRT) sessions in Iqaluit and Pond Inlet. These CRT sessions will be an informal proceeding similar to the CRT conducted by the Board during a Pre-Hearing Conference and will be focused solely on collecting oral comments from the communities.
4. The in-person CRT in Iqaluit will be conducted on **July 27-29, 2023**, between **9:00 am – 5:00 pm EDT** (and an evening session possible on **6:30-9:00 pm EDT for July 27**), The Agenda for the CRT sessions will be issued on **July 20, 2023**. The Board will make arrangements to fly up to five designated Community Representatives from each of the seven North Baffin communities to Iqaluit to attend the Iqaluit CRT in-person. In the coming days, the Board will issue invitations to solicit designated Community Representatives in each community and will provide more details regarding their participation.
5. All parties are advised that Baffinland will be provided 30 minutes to present the SOP and FEIS Addendum at the start of the CRT sessions. For the **Iqaluit CRT only** there will also be 10 minutes allotted to each Intervenor who wishes to share a brief summary of their written comment submissions about the SOP with Community Representatives prior to the commencement of the CRT. The deadline for Baffinland and Intervenors to file their presentation materials for the Iqaluit CRT with the Board is on or before **noon (12:00 pm) MDT on Wednesday, July 19 2023**.
6. On **August 1-2, 2023** between **9:00 am – 5:00 pm EDT** (and an evening session between **6:30-9:00 pm EDT** planned for **August 1**), the Board will be present to conduct a second in-person Community Roundtable in Pond Inlet for the Board to hear directly from interested members of the public in Pond Inlet.
7. Following the completion of the CRT sessions, the Board will consider the SOP and upon completion of decision-making, will, as required under s. 112(5) of the *NuPPAA*, provide

a reconsideration report and recommendations to the Minister of Northern Affairs, (on behalf of the Responsible Minister(s)) for consideration.

8. As directed by the Minister under s. 114, the Board is undertaking the reconsideration of Project Certificate No. 005 associated with the SOP as a priority, however, due to significant logistical constraints, was severely limited in the dates available to conduct the in-person CRT sessions, and has no flexibility to change this aspect of the schedule and still meet the Board's obligations for a timely, but thorough assessment of the SOP.

Further, although the Board recognizes that community members throughout the North Baffin may be busy pursuing traditional activities at the time of the Board's proposed CRT session, due to significant logistical constraints in Pond Inlet, August 1 and 2 are first available dates for the CRT in Pond Inlet. The Board greatly appreciates the flexibility and commitment of designated Community Representatives and interested members of the public to providing their comments to the Board in the Board's previous assessments associated with the Mary River Project and in respect of the upcoming assessment of the SOP.

PARTICIPANT FUNDING

The Board notes that several community-based and non-governmental organizations who previously participated as registered Interveners in the Board's previous assessments associated with the Mary River Project (including the Phase 2 Development Proposal and the PIP Renewal Proposal in 2022) have provided comments in respect of the Proposal and expressed interest in participating in the Board's reconsideration process. As noted in the Board's Reconsideration Report and Recommendations associated with the PIP Renewal Proposal, the Board's assessments have benefitted from the considerable interest and fulsome participation of a variety of Registered Interveners, including organizations whose participation was supported, in part, by the provision of participant funding. Accordingly, the Board appreciates the reference in the Responsible Ministers' recent correspondence to providing participant funding, as follows:

Crown-Indigenous Relations and Northern Affairs Canada may make participant funding available through the Northern Participant Funding Program. The intent of such funding is to provide resources to facilitate meaningful participation in the Board's assessment process. Further information will be shared through the Board's public registry, as applicable.

The Board appreciates the Ministers' provision of participant funding in accordance with the process and expedited timeline set out in this correspondence to enable these parties to continue their participation in the Board's assessment of the SOP.

CONCLUSION

The Board looks forward to conducting the reconsideration and attending the CRT sessions in Iqaluit and Pond Inlet. In the interim, should you have any questions regarding this notice and procedural guidance, please contact the NIRB's Executive Director, Karen Costello at kcostello@nirb.ca.

Sincerely,



Kaviq Kaluraq
Chairperson
Nunavut Impact Review Board

cc: Mary River Distribution List

This is **Exhibit “E”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*

Baffinland Iron Mines Corporation's Phase 2 Development Proposal
("Phase 2 Project")

**NOTICE OF MOTION
FROM THE QIKIQTANI INUIT ASSOCIATION ("QIA")**

NOTICE OF MOTION

The Qikiqtani Inuit Association ("QIA") submits this motion to the Nunavut Impact Review Board ("NIRB or "the Board") on January 26, 2021 via email to info@nirb.ca.

THE MOTION IS FOR an order of the Board permitting Parties to file additional final submissions on Friday February 12, after the close of all oral evidence in the Public Hearing, and with an opportunity for the proponent Baffinland Iron Mines Inc. to file additional final submissions on Wednesday, February 17.

THE GROUNDS FOR THE MOTION ARE:

1. This motion concerns the procedure set by NIRB in this Public Hearing for the Parties to make submissions on the evidence and legal considerations which NIRB must consider in its final determination. That current procedure is:
 - a. The Parties were permitted to file Final Presentations no later than January 18, 2021. This date preceded the commencement of the Technical Meeting on January 25, 2021 and the commencement of the Community Roundtable on February 1, 2021. Notably, this deadline for Final Presentations precedes the oral portion of the Public Hearing when Inuit communities present their final oral evidence to NIRB regarding potential effects of Phase 2 and their views on appropriate mitigation and monitoring of effects;
 - b. The Parties make presentations, and answer questions about presentations, during the Technical Meeting;
 - c. Inuit oral evidence is provided, in response to a Baffinland presentation, during the Community Roundtable; and
 - d. The Parties have the opportunity to make final oral remarks of up to 10 minutes at the end of the Community Roundtable.
2. QIA submits that Parties should have the opportunity to provide additional and updated Final Submissions after an opportunity to integrate all of the relevant evidence, and particularly after an opportunity to integrate the important Inuit oral evidence provided during the Community

Roundtable as this is directly relevant to the decisions which the Board will make and which will profoundly affect Inuit rights.

3. QIA submits that a procedural approach which only allows for final submissions to be made prior to the Technical Meeting, and prior to the completion of oral evidence, breaches the Parties' right to procedural fairness and constitutional requirements for deep consultation. QIA therefore respectfully requests that NIRB amend the procedure for this Public Hearing to permit Parties to file updated or additional Final Submissions in writing on Friday, February 12, one week after the conclusion of oral evidence in the Community Roundtable. QIA submits that an additional period until Wednesday, February 17 for Baffinland to file any updated final submissions after review of the final submissions of other Parties would also be appropriate.
4. NIRB has considerable procedural flexibility to ensure that its processes meet the requirements of procedural fairness and responsibilities for delegated consultation on matters impacting Inuit rights. NIRB has broad procedural ability and an obligation to procedural flexibility to ensure meaningful Inuit participation, including a process which accommodates Inuit oral knowledge and evidence.

Nunavut Agreement, Article 12.2.24

Nunavut Project Planning and Assessment Act section 26(3)

Nunavut Impact Review Board Rules of Procedure Rules 4.1, 4.2, 4.3, 4.4, 4.5

5. NIRB's Procedural Rules specifically support the Board's discretion to adjust its procedures at the end the oral portion of a proceeding. NIRB may either direct Parties to file written briefs or findings of facts and conclusions of law after the close of an oral hearing, or direct that the record be left open if additional evidence is required in order for the Board to make its final decisions based on a full and proper evidentiary record.

47.1 At the close of an oral hearing, the Board may direct any party at the proceeding to file a written brief, to propose findings of fact and conclusions of law, or to do both.

48.1 At the conclusion of an oral hearing, the record shall be closed unless the Board directs otherwise. Once the record is closed, no additional evidence shall be heard unless a written application is filed with the Board and the Board decides, following notification and submissions by the Parties, that the evidence is material and that there was good cause for the failure to produce it in a timely fashion.

6. In response to currently-proposed amendments to the NIRB *Rules of Procedure*, and with respect to proposed revised Rules 123 – 125 regarding the Closing of the Public Record, QIA submitted that parties should, as a matter of course, have a right to make closing arguments after oral evidence:

[QIA recommends that] "immediate closure" of the public record after a hearing NOT be the default setting. Often, there are undertakings ... that need to be dealt with, and at minimum [and] parties should be allowed to make a closing argument and/or review the transcripts prior to closure of the public record.

QIA Comments Re Draft Rules of Procedure, March 18, 2019, available at:

https://www.nirb.ca/portal/dms/script/dms_download.php?fileid=329093

7. The Inuit Parties' right to participate in this proceeding must be meaningful in order to meet the requirements of procedural fairness and deep consultation. Meaningful participation includes an effective opportunity for Parties to present their cases to the NIRB, present oral evidence which factors into a meaningful analysis of the issues, and make final submissions based on all relevant facts and law. Meaningful participation, in this case, requires the opportunity to make specific recommended Project Certificate Terms and Conditions based on the entirety of the evidentiary record and evolving proponent commitments made during the Public Hearing process.
8. The current process for closing submissions established by the NIRB constrains the ability of the Parties to provide informed final submissions based on the full evidentiary record, and specifically constrains the ability to base Final Submissions on an analysis of key Inuit oral evidence in the Community Roundtable. Written submissions filed before the Technical Meeting and Community Roundtable will necessarily be incomplete. They lack the Inuit oral evidence which arises during the Community Roundtable. They lack analysis based on emerging technical evidence, and shifts in the proponents' offered commitments, that arise during both the Technical Meeting and the Community Roundtable. Final submissions based only on evidence available prior to the final two weeks of the Public Hearing will be incomplete, and even inaccurate, if further evidence emerges in the final two weeks of this proceeding that supplements, or contradicts, evidence given earlier.
9. A limit on the ability of the Parties to present final submissions based on the full evidentiary record, and which contain specific recommended conditions for the project that reflect all of the evidence, will in turn impact the NIRB's decision-making. For a project of this scale, NIRB's decision-making burden is substantial and involves a large volume of technical evidence and Inuit knowledge. A key purpose of final submissions (whether oral or in writing) is to assist the NIRB in bearing that burden. Incomplete written arguments, which do not reflect the Inuit oral evidence presented during the Community Roundtable or the appropriate specific changes to project conditions based on the full evidentiary record, cannot serve that function.
10. This procedural weakness is not cured by allowing the Parties to make brief oral submissions at the end of the Community Roundtable. This is a complex hearing involving important environmental, socio-economic, and land-use considerations, among other things. The review process to date involves multiple technical sessions and meetings, two Community Roundtables, many days of hearings, evidence from 24 Parties, and voluminous technical evidence. A ten-minute closing statement at the end of this massive undertaking is not enough time for Parties to effectively make their closing cases. It is certainly not enough time to both revisit and supplement a Party's written arguments based on new evidence and to make effective closing submissions which provide specific proposed Terms and Conditions that reflect the full evidentiary record including Inuit oral evidence.
11. The requirement to make final submissions, without any ability for Parties to update those submissions based on the entirety of the relevant evidentiary record, breaches basic rules of procedural fairness. The Supreme Court of Canada has affirmed that "there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual" (*Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 at p. 653). Public decision makers, such as the NIRB, are under a legal duty to afford interested persons with a fair opportunity to participate in the decision-making process before any action is taken that is detrimental to their interests (*Brown and Evans, Judicial Review of Administrative Action*, 7:1100).

12. The content of the duty of procedural fairness varies depending on the circumstances. However, its principal purpose is to provide a meaningful opportunity for those interested in the proceeding to bring evidence and arguments that are relevant to the decision to be made to the attention of the decision-maker (Brown and Evans, *Judicial Review of Administrative Action*, 7:3110; *Vakulenko v. Canada*, 2014 FC 667 at para. 16). It follows that “once there is a right to a hearing, unduly restricting the ability of the applicant to present a case violates the doctrine of procedural fairness” (*Mackey v. Saskatchewan*, 1988 CarswellSask 460, para. 34).
13. At the high end, the duty of procedural fairness calls for a procedure that is barely distinguishable from that followed in the courts of law. This includes, for example, personal service of notice, full disclosure of relevant information, and an oral hearing before the decision-maker, with the right to be represented by counsel, to call witnesses, to produce evidence, and to cross-examine (Brown and Evans, *Judicial Review of Administrative Action*, 7:1100).
14. Courts apply the five factors from *Baker* to determine the content of the duty of fairness in each case. Those factors are:
 - a. the nature of the decision and the decision-making process in making it;
 - b. the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates;
 - c. the importance of the decision to the individuals affected;
 - d. the legitimate expectations of the party challenging the decision; and
 - e. the nature of the deference accorded to the body.

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at paras. 23-8); *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village) (2004)*, 2004 CarswellQue 1545, 241 D.L.R. (4th) 83 (SCC) at para. 5.

15. Applying the *Baker* factors to the administrative tribunal functions of NIRB, the Parties to this proceeding are owed a high level of procedural fairness. The NIRB proceeding is quasi-judicial. Its decisions are not subject to appeal. Its decision in this matter will have a significant impact on all Parties, but particularly Inuit Parties. All Parties to this proceeding have a legitimate expectation that they will be given (a) full participatory rights; (b) a meaningful opportunity to present their case; and (c) based on the NIRB’s Rules of Procedure and standard practice in judicial and quasi-judicial settings, a right to make their closing written submissions on the basis of the complete record, after the close of evidence.
16. QIA respectfully submits that, if there is not an opportunity to submit updated Final Submissions after the completion of the full evidentiary record, including the oral Inuit evidence in the Community Roundtable, would effectively deprive the Inuit Parties of the right to participate meaningfully as it would:
 - a. deprive QIA and other Parties of the ability to fully present their case because written submissions will be based only on a partial record and the oral submissions are too short;

- b. deprive QIA and the other Parties of the ability to make adequate submissions, since each set of submissions will be based only on a partial record which does not include key evidence which arises during the Technical meeting and during the Inuit evidence in the Community Roundtable;
 - c. deprive QIA and the other Parties of the ability to provide specific and updated recommended Project Certificate Terms and Conditions which reflect the entire evidentiary record as well as the evolving commitments made (or not made) by Baffinland during final phase of the Public Hearing.
17. Moreover, the requirement to make final submissions, without the ability for Inuit Parties to update those submissions based on the entirety of the relevant Inuit oral evidence, breaches constitutional legal principles regarding the application of section 35 and the duty of ‘deep consultation’. At the highest end of the spectrum of Aboriginal consultation obligations are “cases where a strong prima facie case for the claim is established, the right and potential infringement is of a high significance to the Aboriginal peoples, and the risk of non-compensable damage is high. In such cases, deep consultation, aimed at finding a satisfactory interim solution, may be required.” Specifically, a situation involving decisions that deprive Inuit of the ability to harvest marine mammals, which jeopardizes a host of activities – the cultural tradition of sharing country food with others in the community; the opportunity to make traditional clothing; and the opportunity to participate in the hunt, all of which are “fundamental to being Inuk” – requires deep consultation. The review of the Phase 2 proposal is such as situation requiring deep consultation, given the Inuit rights confirmed in the *Nunavut Agreement* and given the high potential for non-compensable damage to Inuit rights.

Haida Nation v. British Columbia, 2004 SCC 73 at para. 44
Qikiqtani Inuit Assn. v Canada (Minister of Natural Resources), 2010 NUCJ
 12 at para. 25
Clyde River v Petroleum Geo-Services Inc., (2017) SCC 40

18. The “deep consultation” requirements in such situations include “the opportunity to make submissions for consideration ... and provision of written reasons to show that Aboriginal concerns were considered and to reveal the impact they had on the decision.” In proceedings before a tribunal in situations of deep consultation, the tribunal “must usually address those concerns in reasons”, typically written reasons, “explain[ing] how it considered and addressed them,” to demonstrate that the tribunal (on whose process the Crown is relying to satisfy Aboriginal consultation obligations, “took the asserted Aboriginal and treaty rights into consideration and accommodated them where appropriate.”

Haida, supra, at para. 44
Clyde, supra, at para. 41 and 47

19. Through the structures created by the *Nunavut Agreement*, NIRB is delegated a specific role in the Crown consultation process. Although regulatory tribunals such as NIRB are not, strictly speaking, an agent of the Crown, their decisions can attract the duty to consult because “they are the vehicle[s] through which the Crown acts.” (*Clyde River*, supra, at para. 29). In the case of NIRB, the procedural requirements for consultation are embedded as modern treaty commitments in the *Nunavut Agreement* (unlike the National Energy Board in the *Clyde River* case). The underlying obligation of the Crown to ultimately determine the sufficiency of Inuit consultation and accommodation does

not absolve NIRB of the clearly delegated procedural aspects of consultation, including deep consultation where that is the appropriate standard.

20. As the Designated Inuit Organization with responsibilities to represent regional Inuit interests, QIA has an obligation to ensure that concerns about impacts on Inuit rights and the appropriate accommodation to address those impacts are properly addressed in this review process to inform NIRB's final decision. In this review process, QIA must listen to and reflect what impacted Inuit are saying about project impacts, mitigation options and monitoring needs. Key evidence on these matters will be presented by Inuit orally at the Community Roundtable, and failure to allow the ability to integrate this evidence into final submissions regarding appropriate Project Terms and Conditions – which are a key aspect of Aboriginal consultation in this case – presents a serious barrier to QIA's ability to provide specific recommendations to NIRB on appropriate accommodation.
21. In QIA's respectful submission, requirements for procedural fairness and deep consultation with Inuit would be met if the Parties are given the opportunity to make detailed submissions in writing on the basis of the full record, after the close of evidence.
22. This is consistent with Rule 47.1 of NIRB's Rules of Procedure which provides that "at the close of an oral hearing, the Board may direct any party at the proceeding to file a written brief." Rule 47.1 allows a process for Parties' submission of written briefs based on the entire record, including all evidence filed in the proceeding. NIRB could also rely on its discretion in Rule 48 to allow the Record of the proceeding to remain open for a limited amount of time, in order to permit Parties to properly summarize the key evidence and corresponding proposed Project Certificate Terms and Conditions in Final Submissions.
23. The end is in sight for this complex hearing. QIA urges NIRB to ensure it has the best possible summary of facts, applicable law, and proposed Project Certificate Terms and Conditions available in its final decision-making process. Accordingly, QIA respectfully submits that the NIRB should allow final written submissions to be filed after the close of oral evidence.
24. For the foregoing reasons, QIA respectfully requests that the NIRB make an order permitting Parties to file additional final submissions on Friday February 12, after the close of all oral evidence in the Public Hearing, and with an opportunity for the proponent Baffinland Iron Mines Inc. to file additional final submissions on Wednesday, February 17.

All of which is respectfully submitted this 26th day of January, 2021



Lorraine Y. Land
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This is **Exhibit “F”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*

May 04, 2023

RE: Letter sent to NIRB on April 06, 2023

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

Re: Request for comments on Baffinland Iron Mines Limited
“Sustaining Operations Proposal for Mary River Project

To: Karen D Costello
 Executive Director
 Nunavut Impact Review Board

Dear NIRB;

This letter is to recall the letter submitted on April 06, 2023 to Nunavut Impact Review Board on behalf of Igloolik Hunters' And Trappers' Association board, please be aware there was miscommunication mistake and that letter was sent in error. Please see below how the letter should have read.

The Igloolik Hunters' And Trappers' Association board supports the request by Baffinland Iron Mines Limited Sustaining Operations Proposal to increase 1.8 MTPA to 6 MTPA. The Igloolik Hunters' And Trappers' Association do not support to truck up to Milne port of additional 10% of iron ore per year. The Igloolik Hunters' And Trappers' Association would like to notify Nunavut Impact Review Board that community members are out on the land from June to August for harvesting/camping with family and friends and for Igloolik Hunters' And Trappers' Association board members

We look forward to work together with all parties during the Nunavut Impact Review Board process

This letter is amended written submission by Igloolik Hunters' And Trappers' Association board of directors for Nunavut Impact Review Board

This is **Exhibit “G”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*



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

March 26, 2021

To: Mary River Distribution List

Sent via email

Re: Final Agenda for the Extension of the NIRB Public Hearing for Baffinland Iron Mines Corp.'s "Phase 2 Development"

Dear Parties:

On February 12, 2020, the Nunavut Impact Review Board (NIRB or Board) distributed a *Draft* Agenda for the **extension of the in-person Public Hearing** in respect of Baffinland Iron Mines Corp.'s "Phase 2 Development", (the extended Public Hearing) which is a proposed amendment to the approved Mary River Project (NIRB File No. 08MN053, Project Certificate No. 005) (the Proposal). As part of the correspondence, the NIRB requested that interested parties provide confirmation of their planned attendance, comments or suggestions on the *Draft* Agenda and any specific logistical arrangements required during the extended Public Hearing.

On or before February 26, 2021 the NIRB received comments on the *Draft* Agenda from the following parties:

- Baffinland Iron Mines Corp. (Doc ID: 333659);
- Nunavut Tunngavik Incorporated (Doc ID: 333661 & 333662);
- Qikiqtani Inuit Association (Doc ID: 333660);
- Mittimatalik Hunters and Trappers Organization (Doc ID: 3333574 & 3333575);
- Amaruq Hunters and Trappers Association (Doc ID: 333665);
- Government of Nunavut (Doc ID: 333663);
- Government of Canada (Doc ID: 333664); and
- Oceans North (Doc ID: 333666).

To assist parties and the public to understand changes made to the *Final* Agenda and this associated procedural guidance, the Board has summarized below, without attribution, several key themes noted in the comments on the *Draft* Agenda received from the parties. However, the summary provided is not exhaustive and parties are advised that all individual comments provided were

considered by the Board to identify changes to the *Final* Agenda, even if not expressly mentioned in the text that follows.

- Concerns were expressed about the change to Iqaluit as the main venue for the extended Public Hearing, and clarity was requested of the Board as to how community members in Pond Inlet will be able to actively participate in the extended sessions, especially during the continuation of the Community Roundtable;
- Parties requested additional time (beyond the current one hour) be allotted to Intervenors who did not have an opportunity to ask oral questions on the Marine Environment during the previous Technical Sessions;
- Parties requested that at least one additional day be added to the extended session to ensure that the remaining Agenda can be completed and the in-person component of the Public Hearing can close at the end of the extended Public Hearing;
- Parties requested clarification as to whether the 30 minute time limit per Intervenor for follow up with respect to the written responses to their written questions is intended to be for follow up to Baffinland and the other Intervenors combined, or whether Intervenors will have two 30 minute time slots, one for follow up with Baffinland and a second for follow up with other Intervenors;
- Intervenors requested time to provide summary presentations to the communities during the Community Roundtable;
- Parties requested that the Board allot time for short closing statements to be provided in-person by the parties after the Community Roundtable concludes; and
- Parties expressed their views that the Board should revise the Board's plans for the extended Public Hearing to remedy deficiencies they have identified in procedural fairness associated with the Board's processes to date.

The NIRB has considered the suggested revisions to the *Draft* Agenda proposed by Parties in their correspondence to the Board and has updated the Agenda according to the feedback received, including greater time allocation where appropriate. The *Final* Hearing Agenda has been attached as [Appendix A](#) for the information of all parties and has been provided in English, Inuktitut and French.

PROCEDURAL DIRECTION

At the outset, the Board emphasizes that the upcoming extension to the reconvened Public Hearing is being conducted near the end of the most extensive reconsideration process ever undertaken by the Board. The Board's active assessment of Baffinland's Phase 2 Development Proposal (with the Northern Railway from the mine to Milne Port included) began on October 12, 2018 with Baffinland's submission of the Addendum to their Final Environmental Impact Statement. Reflecting the scale and scope of the Proposal, the breadth of Parties' technical concerns, the number of registered Intervenors, including Inuit Organizations, regulatory authorities and community-based groups, and the Board's commitment to ensuring a thorough environmental

assessment to inform their recommendation to the Minister, the Board’s assessment has, to date, included the following major steps, including several additions, to its processes:

Date	Process Step
October 12 – November 23, 2018	Information Request and Response
December 21, 2018 - March 29, 2019	Technical Review Comment and Response
January 15-30, 2019	NIRB Community Information Sessions held in-person in each impacted community
April 8-10, 2019	Technical Meeting #1 held in-person in Iqaluit
June 17-19, 2019	Technical Meeting #2 held in-person in Iqaluit
November 2- 9, 2019	5-day Public Hearing held in-person in Iqaluit (suspended prior to sessions being conducted in Pond Inlet on November 7-9)
September 14-18, 2020	Technical Meeting #3 held via teleconference
September 28-October 1, 2020	Community Roundtable and Pre-Hearing Conference held in-person in Pond Inlet with video and audio linkages to hubs in Iqaluit, Winnipeg and Ottawa
January 25-February 6, 2021	12-day reconvened Public Hearing held in-person in Pond Inlet with video and audio linkages to a hub in Iqaluit and participants unable to travel into Nunavut via video or audio links

As indicated above, the assessment to date has included approximately 30 days of in-person meetings in Pond Inlet, Iqaluit, or one of the other potentially affected North Baffin communities, supplemented by teleconference meetings. The process has included several opportunities for Designated Inuit Organizations, regulatory authorities, and community-based Intervenors to provide written and oral technical submissions and questions, and for community members to ask questions, provide comments and express their concerns with the Proposal. As noted by Parties, several thousand documents have been filed, 17 days of oral evidence has been recorded in the transcripts of the Public Hearing sessions conducted by the Board to date, and thousands of questions about the Proposal and Baffinland’s assessment of potential effects have been asked and answered in oral and written formats. The notion that the Board’s assessment has been rushed and not thorough is not borne out by the Public Record, and all these prior submissions form the Public Record for the Board’s assessment of the Proposal to date and will inform the Board’s decision-making in respect of the Proposal. For the clarity of all parties, these previously filed submissions do not need to be repeated during the Public Hearing to be considered by the Board.

These completed process steps demonstrate the Board’s extensive efforts to facilitate a procedurally fair, transparent, and publicly accessible reconsideration process that considers Inuit Qaujimagatuqangit, scientific knowledge and the questions, comments and experiences from the public shared with the Board even during the challenges posed by a worldwide pandemic over the last year. The focus of the upcoming extension of the Public Hearing is to draw the technical

sessions of the Public Hearing to a close with final follow up on questions in relation to unresolved technical issues identified by Intervenor and to provide an opportunity for the potentially affected North Baffin communities to ask questions, provide comments and share their knowledge with the Board during the Community Roundtable. When the Board considered the timing and logistics associated with the extended Public Hearing, the Board was mindful of the concerns of Parties that the residents of Pond Inlet must play a central role in respect of this assessment, but also recalled that the Board has heard from the six other potentially-affected North Baffin communities that they would benefit from community representatives from Pond Inlet being present with them in a single location so that all communities could share knowledge and caucus regarding potentially shared concerns. Unfortunately, as previously noted by the Board, limits on available accommodation in Pond Inlet during the Board's current and previous assessments of the original Mary River Project (2012) and the Early Revenue Phase (2014) have meant that it is not logistically possible to have all community representatives, representatives from Baffinland and the Intervenor, the Board and staff and the Board's technical support personnel all attending a single in-person proceeding in Pond Inlet.

These logistical challenges, although further heightened with travel restrictions for non-essential personnel outside of Nunavut, predated the COVID-19 pandemic and remain a determining factor in the Board's decision to host the extended Public Hearing in Iqaluit. Although the Board recognizes that Parties may have preferred to attend the extended sessions altogether in Pond Inlet, due to the existing logistical constraints, this is not feasible. Accordingly, the Board will use technology to facilitate access to its meetings at the primary venue in Iqaluit by providing audio/visual feeds by Zoom and teleconference to participants in Pond Inlet and to representatives of the Proponent and Intervenor who are unable to travel into Nunavut due to travel restrictions. Attendance records from the Board's Public Hearing for the file held in Iqaluit in November 2019 have indicated since that initial session of the Public Hearing, there has been a significant increase in the number of participants viewing and contributing to the assessment from across Nunavut and Canada, despite the COVID-19 pandemic. The Board maintains that through the modifications of the Board's standard practices during the COVID-19 pandemic, specifically combining various types of proceedings and platforms, including in-person venues, live audio/visual feeds and teleconference options and by providing feeds for live broadcasting to Nunavut Independent Television Network, the Board has provided unprecedented public access to these proceedings.

Although the Board recognizes that several Intervenor have objected to the Board's procedural direction to Intervenor to complete questioning on unresolved technical issues via written questions rather than asking questions in oral format, as outlined above, all the current Intervenor previously had opportunities in the various technical sessions held since 2018 to ask questions and provide evidence on the Public Record in oral fashion. The focus of the in-person questioning and limited 30-minute follow up time for Intervenor during this part of the extended Public Hearing is not to repeat questions they have already provided on the Board's Public Record in oral or written form, but rather to follow up with Baffinland or specific Intervenor in respect of the most recent written answers to written questions in relation to that Intervenor's outstanding technical

issues. While several Parties requested more time for oral follow up, as permitted under the NIRB's *Rules of Procedure*, when written questions and answers are provided, the Board typically does not provide a subsequent opportunity for questioners to follow up in respect of the answers they receive. The Board's inclusion of a 30 minute opportunity for each Intervenor to follow up in respect of answers they have received to date in oral format has been included to enable Parties to seek clarifications or further follow up in respect of answers that are unclear or that raise follow up questions in respect of their unresolved technical issues. The time limits set out in the *Final Agenda* will be enforced and Parties should prioritize the use of their follow up time accordingly.

During the five days set aside for the Community Roundtable sessions, the Board will hear questions, comments, oral evidence and closing statements directly from the nominated representatives of the seven (7) potentially affected North Baffin communities and from the residents of Pond Inlet in attendance at the Zoom hub there.

Although Parties requested being given time to make short closing remarks at the end of the Community Roundtable session, given the number of Intervenors and existing volume of technical comment submissions already provided by Intervenors to date, the Board has determined that written closing statements are more appropriate and will be required so that Parties can more comprehensively summarize their interventions for the Board, and identify the issues they consider to remain unresolved in whole or in part. Accordingly, following the completion of the extended Public Hearing sessions in April 2021, Intervenors will have until **May 6, 2021 at 3:00 pm Mountain time** to provide their written closing statements to the Board. As recognized in the Board's *Rules of Procedure*, as the Proponent bears the ultimate onus of proof in respect of the Proposal, and in keeping with standard Board practices, the Proponent will have the final opportunity to file their written closing statements on the record on **May 13, 2021 at 3:00 pm Mountain time**.

PARTICIPATION OPTIONS

The extended Public Hearing will consist of in-person proceedings hosted in the primary location of Iqaluit, as well as an in-person audio/video Zoom link to the **Atakaalik Community Hall** for residents of Pond Inlet who wish to pose questions and share their knowledge with the Board through the Zoom feed from a public venue. The Board's proceedings will also be available to any resident of Pond Inlet or the public in general who wish to participate from home using a combination of audio/video participation options similar to previous meetings (Teleconference and Zoom). It should be noted that due to COVID-19 restrictions on the number of people who can attend indoor meetings, the in-person venue in Iqaluit will not be open to the public, and is reserved for the Board, the Proponent, Intervenors, nominated Community Representatives and identified media representatives only. The NIRB has been granted an exemption to the current 100-person limit for in-person gatherings in Iqaluit to allow for the attendance of up to 140 people at the Iqaluit venue, and all of these seats in the venue will be required to accommodate the Public Hearing participants.

Due to public health restrictions in other parts of Canada, it is not feasible for the Board to provide a southern hub for these proceedings. Intervenor who are unable to attend in Iqaluit, will be required to participate through teleconference or Zoom from their own location. This will include being able to view the video feed of the proceedings online or to access the audio feed by telephone, and being able to participate in discussions by phone or via the on-line audio/video feed.

SPECIFIC REVISIONS TO THE *DRAFT* AGENDA

Recognizing that the Government of Canada has several Departments that had outstanding technical issues and questions in respect of the marine environment, the Board has modified the *draft* Agenda for the technical sessions on Day 1, by allotting additional time to the Government of Canada. Under the revised time limit, the Government of Canada has been allotted a total of 90 minutes for all Departments, and the other listed Intervenor will each have 60 minutes to ask questions of the Proponent in respect of outstanding technical issues in relation to the Marine Environment Presentation provided during the reconvened Public Hearing in January-February 2021. To ensure the questioning on the Marine Environment can be concluded on Day 1, the Board has added an evening session to the Agenda for Day 1.

On Days 2 and 3 the Board has clarified that each Intervenor (with the exception of the Government of Canada Intervenor) will be provided with a **total of 30 minutes** to provide any follow-up arising from the written responses to questions provided by Baffinland and other Intervenor. The Board recognizes that because the “Government of Canada” consists of 7 Departments, several with specific regulatory responsibilities for the existing Mary River Project and the Proposal if it were to be approved, it is reasonable to add time to the Government of Canada’s time for follow up to questions. The Board has modified the *draft* Agenda to provide a total of 120 minutes for follow up of all Government of Canada Departments. Although the Board notes that several Intervenor requested more time for follow up, recognizing that this session is a limited opportunity for clarifications only, the 30-minute time allotment for follow up for all other Intervenor is reasonable and remains unchanged. The Board notes that there are 24 Intervenor participating in this Public Hearing, and as such, it is critical that Intervenor be respectful of the time they are allotted in the Agenda. Bearing this in mind, the Board will be strictly enforcing time allotments for questions in order to preserve time for community members to speak during the Community Roundtable sessions and to maintain equity amongst Intervenor in terms of follow up time.

For the Community Roundtable, the NIRB has requested the nomination of ten (10) Community Representatives from Pond Inlet and five (5) from each of Igloolik, Sanirajak, Arctic Bay, Clyde River, Grise Fiord and Resolute Bay. As previously announced, these representatives are expected to constitute a broad demographic within the community including, Women, Youth, Elders, Hunters and the Hamlet. Throughout the Community Roundtable portion of the proceedings, the Board will have the ten (10) representatives from Pond Inlet seated at the table from April 16-21, 2021. For the benefit of the other six (6) North Baffin Communities, the Board has set out a specific

schedule for which two communities will be seated at the table along with Pond Inlet to ask their questions as specified in the schedule set out in the *Final Agenda*. Representatives from two communities will join Pond Inlet's community representatives at the table for a full day to ask questions and share their knowledge. The final two (2) days of the Community Roundtable will be open to the community representatives from any of the seven (7) North Baffin Communities to ask their remaining questions or provide additional comments. During the Community Roundtable, residents attending at the Hall in Pond Inlet can identify to NIRB staff that they wish to ask questions or provide comments and the Board will periodically provide opportunities for Pond Inlet residents to participate as directed by the Chairperson.

ADDITIONAL DIRECTION REGARDING PRESENTATIONS AND OTHER MATERIALS REMAINING TO BE FILED

Parties are reminded that all previously filed Exhibits in the Public Hearing proceedings in November 2019 and January-February 2021, written questions filed on March 1, 2021 and responses filed on March 22, 2021 are already part of the Public Record for the file and do not need to be refiled during the extended Public Hearing. Accordingly, the Board anticipates that there will be very limited filing of additional materials required during the extended Public Hearing. With respect to Baffinland's overview presentation during the Community Roundtable, the NIRB asks that Baffinland provide sufficient printed copies of the overview presentation, including translated versions, for both the Iqaluit and Pond Inlet venues.

The Board notes that as with the Agendas for the previously-scheduled Community Roundtable sessions, several Intervenors reiterated their request for time to be added to the Agenda to allow them to provide summary presentations about their interventions to community representatives at the start of the Community Roundtable session. Recognizing that the focus of the extended Public Hearing is on ensuring communities have the opportunity to share their knowledge and provide their questions, comments and observations to the Board, the Board does not wish to take time away from the opportunities of community representatives to address the Board directly. Consequently, the Board has not deviated from the Board's previous practice and has not added time to allow for presentations by Intervenors during the Community Roundtable.

UPDATED PUBLIC HEARING LOGISTICS

The NIRB has made the following logistical arrangements for the Technical and Community Roundtable Sessions of the extended Public Hearing:

Interpretation: Simultaneous English and Inuktitut interpretation will be provided to the extent practicable.

Seating (in-person meeting only): Seating will be assigned at each location based on the numbers of parties in each location. Once the maximum in-person meeting attendance is reached then no more admissions can occur for that session

(a session is the morning, afternoon, and evening time slots for the meetings, separated by breaks longer than a health break). **Masks will be required in all in-person meeting locations.** Adherence to Public Health orders and the NIRB's protocols is expected, and participants will be required to follow the facility's health and safety requirements as well as those for the Territory at the time of the meetings.

- Facilitator:** The Technical Sessions and Community Roundtable will be facilitated by the NIRB's Chairperson.
- Materials:** The NIRB will provide access to the digital copy of all materials contained within the Board's Public Registry for the Mary River project, including the FEIS Addendum, transcript and Exhibits from the November 2019 Public Hearing, and any additional submissions received up to date and throughout the assessment process.
- Meeting times:** Meetings start at 9:00 a.m. and run until 5:00 p.m. daily (ET), with an hour break for lunch and two 15-minute health breaks throughout the day. Under the new NIRB COVID-19 protocols, refreshments will not be served during breaks so participants must bring their own. Meals will not be provided.
- Format:** In-person with audio-video feed through Zoom and teleconference (details provided to registered participants).

Given the limited gathering sizes allowed under current Public Health Orders, seating must be designated in Iqaluit, and the NIRB will make efforts to ensure fair and appropriate allocation of seats per registered party. The NIRB expects that registered parties maintain full and on-time attendance for their allocated number of seats, for the duration of the meetings, with respect for the limited capacity of the venues.

Due to the limited in-person space, it is **critical that parties confirm the list of attendees representing their organizations as soon as possible to ensure they will have the appropriate number of seats.** Additionally, parties are requested to provide a list of representatives that wish to attend through the Zoom link or teleconference options, including name, position, and respective area of expertise or authority, and email. **Parties should also indicate which person will be the key speaker for the Public Hearing and this information is required on or before April 1, 2021.**

Summary of Important Dates for parties

May 6, 2021	Intervenors to file written Closing Statements by 3:00pm MT
May 13, 2021	Proponent to file written Closing Statements by 3:00pm MT
May 14, 2021	Anticipated Close of the Public Record

Should you have questions regarding the extended Public Hearing for the NIRB's assessment of the Phase 2 Development Proposal, please contact Cory Barker at (867) 983-4607 or cbarker@nirb.ca or Guillaume Daoust at (867) 983-4609 or gdaoust@nirb.ca.

Sincerely,



Karen D. Costello
Executive Director
Nunavut Impact Review Board

cc: Megan Lord-Hoyle, Baffinland Iron Mines Corporation
Lou Kamermans, Baffinland Iron Mines Corporation

Attachment: Appendix A – *Final* Extended Public Hearing Agenda for Baffinland's Phase 2 Development Project Proposal

Enclosed: NIRB COVID-19 Protocols (*November 4, 2020*)

**APPENDIX A:
FINAL EXTENDED PUBLIC HEARING AGENDA FOR PHASE 2 DEVELOPMENT PROPOSAL**

NIRB File No.: 08MN053 – Phase 2 Development Project Proposal
Proponent: Baffinland Iron Mines Corporation
Formats: In-person with audio-video feed (details provided to registered participants)
Locations: **Aqsarniit Hotel and Conference Centre, Iqaluit, NU (in-person, invitation only)**

Atakaalik Community Hall, Pond Inlet, NU (Community Member Public Access)

Alternative Participation Options:

Zoom Audio/video Feed (Online)
BlueJeans Teleconference Line

Dates: April 12-21, 2021

Times: **All times given are approximate and the order of discussion topics are subject to change at the NIRB’s discretion. Additional evening sessions may be scheduled if deemed necessary to complete the agenda.**

Day Time Sessions: 9:00 am – 5:00 pm
Evening Sessions: 6:30 pm – 9:00 pm

Note (1): Witnesses appearing on behalf of the Proponent and Registered Intervenors that were previously sworn in/affirmed during the Public Hearing Sessions from January 25-February 6, 2021 are considered to still be under oath and any evidence provided by these Parties during the extended session is considered to still be given under oath.

Note (2): All oral testimony will be recorded and transcribed by the Board and may also be recorded by the media.

Note (3): Zoom and Teleconference information will be provided to registered participants and interested members of the Public the week of April 5, 2021.

Sunday, April 11, 2021 – Training Session – 6:30-9:00 p.m.

Community Representatives invited by the Board will be required to participate in a training session to demonstrate how proceedings will be conducted, their role in the meetings and how to most effectively participate.

Day 1 – April 12, 2021 – Technical Sessions (Evening session)

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (*45 minutes*)
 - i. Introductions, overview of procedural history, structure of proceedings, etc.
 - ii. Review of Agenda
 - iii. Housekeeping Items, Public Health Order Requirements

Technical Session

3. Roundtable of questions on the Marine Environment from parties who were unable to pose oral questions in the January-February 2021 Public Hearing sessions.
 - i. Government of Canada (*90 minutes*)
 - ii. Government of Nunavut (*60 minutes*)
 - iii. Hamlet of Clyde River and the Nangmautaq Hunters and Trappers Association (*60 minutes*)
 - iv. Amaruq Hunters and Trappers Association (*60 minutes*)
 - v. Oceans North (*60 minutes*)
 - vi. World Wildlife Fund (*60 minutes*)
 - vii. Nunavut Independent Television (*60 minutes*).

Close of Day 1

Day 2 - Tuesday, April 13, 2021 – Technical Sessions

Technical session (*Continued from Day 1*)

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (*20 minutes*)
3. Roundtable of follow-up by Intervenors in respect of responses by Baffinland and other Intervenors to Intervenors' written questions and unresolved issues.
 - i. Qikiqtani Inuit Association (*30 minutes*)
 - ii. Nunavut Tunngavik Incorporated (*30 minutes*)
 - iii. Government of Nunavut (*30 minutes*)
 - iv. Government of Canada (follow up by Crown-Indigenous Relations and Northern Affairs Canada, Environment and Climate Change Canada, Fisheries and Oceans)

Canada, Health Canada, Natural Resources Canada, Parks Canada and Transport Canada) (120 minutes)

- v. Hamlet of Pond Inlet (30 minutes)
- vi. Mittimatalik Hunters and Trappers Organization (30 minutes)

Close of Day 2

Day 3 – Wednesday, April 14, 2021 – Technical Sessions (Evening session)

Technical session (Continued from Day 2)

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (20 minutes)
3. Continued Roundtable of follow-up by Intervenors in respect of responses by Baffinland and other Intervenors to Intervenors' written questions and unresolved issues.
 - i. Igloolik Working Group (30 minutes)
 - ii. Igloolik Hunters and Trappers Organization (30 minutes)
 - iii. Hamlet of Arctic Bay (30 minutes)
 - iv. Ikajutit Hunters and Trappers Association (30 minutes)
 - v. Hamlet of Sanirajak (30 minutes)
 - vi. Hall Beach Hunters and Trappers Organization (30 minutes)
 - vii. Hamlet of Clyde River (30 minutes)
 - viii. Nangmoutaq Hunters and Trappers Association (30 minutes)
 - ix. Amaruq Hunters and Trappers Association (30 minutes)
 - x. Oceans North (30 minutes)
 - xi. World Wildlife Fund (30 minutes)
 - xii. Nunavut Independent Television (30 minutes)

Close of Day 3

Day 4 – Thursday, April 15, 2021 – Technical Sessions (Evening Session)

Technical session (Continued from Day 3)

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (20 minutes)

3. Follow up questioning of, and replies to the Intervenors by Baffinland in relation to the presentations by Registered Intervenors in the January-February 2021 Public Hearing sessions (*5 hours*)
4. Follow up questioning of the Proponent and Intervenors by the Board
5. Identification of Motions or Objections arising during the extended technical session

Close of Day 4

Day 5 – Friday, April 16, 2021 – Community Roundtable

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (*30 minutes*)

Community Roundtable Session

3. Presentation by the Proponent – **Introduction and Overview of Project** (*45 minutes*)
4. Questioning of the Proponent and Intervenors by Community Representatives from Pond Inlet, Igloolik and Grise Fiord
5. Comments and Questions by community members in the Pond Inlet venue who have advised the Chairperson that they wish to speak.

Close of Day 5

Day 6 – Saturday, April 17, 2021 – Community Roundtable

Community Roundtable Session (Continued)

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (*20 minutes*)
3. Questioning of the Proponent and Intervenors by Community Representatives from Pond Inlet, Clyde River and Resolute Bay
4. Comments and Questions by community members in the Pond Inlet venue who have advised the Chairperson that they wish to speak.

Close of Day 6

Day 7 – Monday, April 19, 2021 – Community Roundtable (Evening Session)

Community Roundtable Session (Continued)

General Opening

1. Opening prayer

2. Opening Remarks by the Chairperson (20 minutes)
3. Questioning of the Proponent and Intervenors by Community Representatives from Pond Inlet, Arctic Bay and Sanirajak.
4. Comments and Questions by community members in the Pond Inlet venue who have advised the Chairperson that they wish to speak.

Close of Day 7

Day 8 – Tuesday, April 20, 2021 – Community Roundtable

Community Roundtable Session (Continued)

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (20 minutes)
3. Questioning of the Proponent and Intervenors by Community Representatives with outstanding questions from any of the seven (7) potentially affected North Baffin communities. (4 hours)
4. Comments and Questions by community members in the Pond Inlet venue who have advised the Chairperson that they wish to speak.

Close of Day 8

Day 9 – Wednesday, April 21, 2021 – Community Roundtable

Community Roundtable Session (Continued)

General Opening

1. Opening prayer
2. Opening Remarks by the Chairperson (20 minutes)
3. Questioning of the Proponent and Intervenors by Community Representatives with outstanding questions from any of the seven (7) potentially affected North Baffin communities. (2 hours)
4. Comments and Questions by community members in the Pond Inlet venue who have advised the Chairperson that they wish to present.
5. Closing Remarks by Community Representatives
 - i. Arctic Bay (10 minutes)
 - ii. Clyde River (10 minutes)
 - iii. Grise Fiord (10 minutes)

- iv. Igloolik (*10 minutes*)
- v. Resolute Bay (*10 minutes*)
- vi. Sanirajak (*10 minutes*)
- vii. Pond Inlet (*20 minutes*)

6. Closing Remarks by the Chairperson (*40 minutes*)

Close of Day 9

This is **Exhibit “H”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*



NIRB File No.: 08MN053
NPC File No.: 149829

July 19, 2022

To: The Honourable Dan Vandal, P.C., M.P.
Minister of Northern Affairs
House of Commons
Government of Canada
Ottawa, ON K1A 0A6

Megan Lord-Hoyle
Vice President
Baffinland Iron Mines Corporation
2275 Upper Middle Rd E Suite. 300
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Lou Kamermans
Director, Sustainable Development
Baffinland Iron Mines Corporation
2275 Upper Middle Rd E Suite. 300
Oakville, Ontario, L6H 0C3

Sent via email: dan.vandal@parl.gc.ca, megan.lord-hoyle@baffinland.com and
lou.kamermans@baffinland.com

Re: Notice and Procedural Guidance Regarding the Nunavut Impact Review Board's Assessment of Baffinland Iron Mines Corporation's "Production Increase Proposal Renewal" Project Proposal

Dear Honourable Dan Vandal, Megan Lord-Hoyle and Lou Kamermans:

The purpose of this correspondence is to provide notice to you as required under s. 112(3) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*) that the Nunavut Impact Review Board (NIRB or Board) is initiating a formal reconsideration of the terms and conditions of Project Certificate No. 005 in light of Baffinland Iron Mines Corporation's (Baffinland or Proponent) submission of the "Production Increase Proposal Renewal" project proposal (PIP Renewal or Proposal), a proposed short-term amendment (to December 31, 2022) to the approved Mary River Project (NIRB File No.: 08MN053). In addition to providing the formal notice of the Board's reconsideration, recognizing the priority and time sensitivity of the Board's assessment of the Proposal, the Board is also taking this opportunity to issue important procedural guidance to all parties wishing to participate in the Board's reconsideration process for the PIP Renewal.

The Board highlights the following key dates of interest to participants (more details of the process steps follow under the heading Procedural Guidance):

- On or before **noon (12:00 pm) MST on Tuesday, August 9, 2022** the Board invites Designated Inuit Organizations, interested parties (including Intervenors 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 any additional technical comments in respect of the PIP Renewal;
- On **Tuesday, August 16, 2022** between **9:00 – 5:00 pm** and **6:30 – 9:00 pm**, the Board will conduct a Community Roundtable in Pond Inlet with opportunities for designated Community Representatives from Pond Inlet and members of the public, with teleconference and/or videoconference links being made available for designated Community Representatives from Arctic Bay, Clyde River, Grise Fiord, Igloolik, Resolute and Sanirajak to participate; and
- On or before **noon (12:00 pm) MST on Friday, August 19, 2022** the Board invites Baffinland to file its final reply submission.

PROCEDURAL HISTORY OF THE PRODUCTION INCREASE PROPOSAL RENEWAL

On June 7, 2022, the Nunavut Impact Review Board (NIRB or Board) received a positive conformity determination from the Nunavut Planning Commission (the Commission) for Baffinland’s PIP Renewal, which is a proposed short-term modification to the approved Mary River Project (as subsequently amended by the Early Revenue Phase Proposal in 2014, the Production Increase Proposal in 2018 and the Production Increase Proposal Extension in 2020). The Commission indicated that the Proposal was not considered to be a “significant modification” to the Board’s previous assessments and referred the Proposal to the NIRB for modifications to Project Certificate No. 005.

As set out in the project description filed with the NIRB, the “Production Increase Proposal Renewal” (PIP Renewal) reflects Baffinland’s request to reconsider Term and Condition 179(a) and (b) of Project Certificate No. 005, which expired on December 31, 2021.¹

179(a)

Until December 31, 2021, the total volume of ore shipped via Milne Inlet may exceed 4.2 million tonnes per year, but must not exceed 6.0 million tonnes in any calendar year. After December 31, 2021, the maximum total volume of ore shipped via Milne Inlet in a calendar year returns to 4.2 million tonnes per year, unless this condition has been further modified under section 112 of Nunavut Planning and Project Assessment Act, S.C. 2013, c. 14, s. 2.

179(b)

Until December 31, 2021, the total volume of ore transported by truck on the Milne Inlet Tote Road may exceed 4.2 million tonnes per year, but must not exceed 6.0 million tonnes in any calendar

¹ NIRB Doc ID: 330475

year. After December 31, 2021, the maximum total volume of ore transported by truck on the Milne Inlet Tote Road in a calendar year returns to 4.2 million tonnes per year, unless this condition has been further modified under section 112 of Nunavut Planning and Project Assessment Act, S.C. 2013, c. 14, s. 2.

After December 31, 2021 these components of Term and Condition 179 currently authorize Baffinland to transport up to 4.2 million tonnes of iron ore each year (Mt/a) from the Mary River Mine along the Tote Road to be shipped via Milne Inlet.

Term and Condition 179(a) and 179(b) were originally added to Project Certificate No. 005 in October 2018 by the Minister of Intergovernmental, Northern Affairs and Internal to authorize the increase to the limit of iron ore trucked on the Tote Road and shipped through Milne Inlet from 4.2 million tonnes per year (as approved previously under the Early Revenue Phase project proposal in 2014) to 6.0 million tonnes per year (as assessed by the Board under the Production Increase Proposal project proposal and issued under Amendment No. 2 to Project Certificate No. 005). Amendment No. 2 set the increased ore transportation and shipping limit of 6 million (Mt/a) until December 31, 2019. In late 2019 when the November 2019 Public Hearing associated with the Board's assessment of Baffinland's Phase 2 Development Proposal was suspended, Baffinland sought to extend the increased 6 million tonnes per year transportation and shipping limit for an additional year while the NIRB's assessment of the Phase 2 Development Proposal was completed (this proposal is referenced as the Extension Request to the Production Increase Proposal or PIP Extension). In June 2020, based on the NIRB's recommendation and the Minister of Northern Affairs' and Responsible Ministers' approval, the 6 million tonnes per year limit was extended until December 31, 2021 (Project Certificate No. 005 Amendment No. 3). On December 31, 2021, the changes to Term and Condition 179(a) and (b) that allowed for the transportation and shipping of 6.0 million tonnes per year via Milne Inlet expired, and the limit returned to 4.2 million tonnes per year.

On June 13, 2022, Baffinland completed its online application to the NIRB for the PIP Renewal. By way of the PIP Renewal, Baffinland is seeking to continue the transportation and shipping of up to 6 million tonnes through Milne Inlet for one additional season to December 31, 2022 while the decision-making process completes for the Phase 2 Development Proposal. The scope of activities proposed under the PIP Renewal include: the continuation of mining, trucking and shipping of up to 6 million tonnes per year of iron ore using the existing Tote Road and the Northern Shipping Route from Milne Inlet until December 31, 2022. The project description and associated documentation can be accessed directly via the NIRB's online public registry system at www.nirb.ca/project/125710.

On June 13, 2022, the NIRB circulated the PIP Renewal application to interested parties and requested comments on:

- Whether or not, from an impact assessment perspective, the activities proposed within the PIP Renewal were included within the scope of the previously assessed Mary River Project (including as modified by the Early Revenue Phase Project Proposal, the Production Increase Proposal, and the Extension Request to the Production Increase Proposal);
- Whether or not, from an impact assessment perspective, the proposed modifications constitute a significant modification to the original Mary River Project as previously assessed (and subsequently modified under the Early Revenue Phase, the Production

Increase Proposal, and the Extension Request to the Production Increase Proposal) by the NIRB;

- Whether the proposed modifications are consistent and in compliance with the current terms and conditions of the existing Project Certificate No. 005 or whether changes to the Project Certificate are necessary to reflect the modifications;
- If a reconsideration is determined to be warranted, providing feedback to the NIRB regarding any preferences for the format (in writing, teleconference/videoconference, in-person proceedings) and timing of the reconsideration process; and
- Any other matter of importance to the commenting party related to the Board's processing of the PIP Renewal.

On June 15, 2022, Baffinland filed a Supplemental Information Package¹ in relation to the PIP Renewal with the Board and the Board circulated the Package on June 17, 2022 for the information of parties for comment on or before June 28, 2022. This deadline was later extended to July 5th following a request the Board deemed reasonable.

On or before July 5, 2022, the following parties provided comments:

- Nunavut Tunngavik Inc. (NTI) (Doc ID: 340633 & 340632)
- Qikiqtani Inuit Association (QIA) (Doc ID: 340635)
- Government of Nunavut (GN) (Doc ID: 340629)
- Government of Canada (GoC) (Doc ID: 340630)
- Mittimatalik Hunters & Trappers Organization (MHTO) (Doc ID: 340632)
- Ikajutit Hunters & Trappers Organization (Ikajutit HTO) (Doc ID: 340631)
- Hamlet of Sanirajak (Sanirajak) (Doc ID: 340628)
- Oceans North (ON) (Doc ID: 340634)
- Baffinland Iron Mines Corporation (Baffinland) (Doc ID : 340636)

For the convenience of reviewers, the Board has attached a summary by topic of the comments received in Appendix A, but parties are advised the summary table is not exhaustive and has been provided in this format for the convenience of reviewers. The full documents are available in their entirety as posted on the NIRB's Public Registry from the following link: www.nirb.ca/project/125710 and searching the NIRB Document ID numbers provided.

On July 11, 2022 the Minister of Northern Affairs sent correspondence² addressed to the NIRB's Chairperson, which was circulated by the NIRB on July 12, 2022. The Minister's correspondence was provided on behalf of the federal Responsible Ministers in accordance with s. 114 of the *NuPPAA*. The Minister advised that if the Board were to determine that the PIP Renewal warrants a reconsideration of Project Certificate No. 005, that:

...given the time-limited nature of the proposal (i.e. until December 31, 2022), as well as Baffinland's recent June 3, 2022 notice to the Nunavut Labour Standards Compliance Office concerning the potential for mass layoffs at the Mary River Mine site and other economic considerations, this proposal should receive priority over other ongoing review processes under the Board's jurisdiction.

¹ NIRB Doc. ID Nos.: 340177 & 340742.

² NIRB Doc. ID No: 340699.

While I am aware of other ongoing assessments before the Board, given the time-sensitive nature of this process, it is imperative that the assessment of the Production Increase Proposal Renewal proposal is prioritized and conducted in an efficient and expeditious manner. I would thus appreciate receiving a recommendation from the Board by August 26, 2022.

The comments received from regulatory authorities, Inuit organizations and other parties, and the Minister's direction provided under s. 114 of the *NuPPAA* were considered by the Board to decide whether a reconsideration is warranted and also to develop the procedural guidance that follows.

THE BOARD'S ANALYSIS OF WHETHER A RECONSIDERATION IS WARRANTED

In general, where an approved project is already governed by the terms and conditions of a NIRB Project Certificate, to determine the process and procedure guiding NIRB's assessment of any modification proposal the Board must consider the following questions:

- Was the proposed modification included within the scope of the original project (and subsequent modifications) as previously assessed by the NIRB?
- Is the proposed modification consistent with the terms and conditions of the existing NIRB Project Certificate, or are changes to the Project Certificate necessary to reflect the modification?
- Does the proposed modification constitute a significant modification to the original project that is integrally linked to the original project (including as subsequently modified under any modification proposals that have been assessed and approved by the NIRB)?
- Does the proposed modification constitute a significant modification to the original project that is not integrally linked to the original project, and that has sufficient scope to be assessed as an independent project proposal?

On the basis of the Board's review of the Proposal, and parties' comment submissions the Board has concluded the following:

- Term and Condition 179 (a) and (b) of Project Certificate No. 005 must be revised if the PIP Renewal activities were to be allowed to proceed;
- Other than a short-term renewal of the 6 Mt/a limit, there are no changes to the scope of the activities under the PIP Renewal from those previously authorized under the PIP and the PIP Extension;
- There has been a change in circumstances since the PIP and the PIP Extension were approved because the 6 million tonnes per year transportation and shipping limit expired before the decision-making associated with the Phase 2 Development Proposal has been completed; and
- From 2018-2021 Baffinland has been authorized to transport and ship 6 million tonnes per year, and as such the NIRB's assessment of the PIP Renewal should be informed by additional relevant information regarding changes to the potential for ecosystemic and socio-economic effects provided to the Board during the annual Monitoring Program applicable to the Mary River Project (as modified) and the relevant information, knowledge and experience shared by participants about potential effects of the existing Mary River Project during the Board's assessment of the Phase 2 Development Proposal.

On this basis, the Board has determined that based on the potential for ecosystemic and socio-economic effects that may differ from the effects previously assessed under the PIP and the PIP Extension, the PIP Renewal Proposal constitutes a **significant modification** to the Mary River Project as previously assessed (including as modified by the subsequent amendments). Although the Board acknowledges that some commenters identified that amendments beyond term and condition 179(a) and (b) are required to address concerns about existing Project effects, including issues such as project monitoring of cumulative effects, issues in respect of the functioning of existing Working Groups and to potentially incorporate recent commitments made by Baffinland in respect of marine shipping to mitigate the potential for effects, parties are advised that given the short-term nature of the PIP Renewal, and recognizing that a decision in respect of the Phase 2 Development Proposal is underway, the Board does not consider it appropriate to conduct a broad reconsideration of the Mary River Project's existing effects mitigation and monitoring program. Accordingly, parties are requested to focus on the reconsideration of term and condition 179(a) and (b) and the specific terms and conditions added to Project Certificate No. 005 under Amendment 2 and 3 associated with the Board's prior assessment of the Production Increase Proposal (2018) and the Production Increase Proposal Extension (2020).

Having determined that it is appropriate to assess the PIP Renewal as a formal reconsideration of specified terms and conditions of the Project Certificate, the Board provides the following formal notice of reconsideration to the Minister and Proponent, and the attached procedural guidance to interested parties.

NOTICE OF RECONSIDERATION

As indicated above, the Board has decided that as provided for under Article 12, Section 12.8.2 (a) of the *Nunavut Agreement* and s. 112(a) of the *NuPPAA* (changed circumstances) a reconsideration of specified terms and conditions of Project Certificate No. 005 is required in light of the continuation of activities proposed in the PIP Renewal Proposal. As required by s. 112(3) of the *NuPPAA*, the NIRB is providing notice of a formal reconsideration of the terms and conditions of Project Certificate No. 005 to the Proponent and the Minister.

RECONSIDERATION PROCESS: NEXT STEPS

As stated in s. 112(4) of the *NuPPAA* the NIRB has the discretion to determine the appropriate process for the conduct of a reconsideration of Project Certificate terms and conditions that is appropriate in the circumstances of the specific proposal before the Board. The Board considered the process and timing comments of the parties, including the Minister's direction under s. 114 as to priorities and timelines, seasonal and logistical constraints, and the Board's prior approach to the reconsiderations conducted by the Board for the Production Increase Proposal (PIP) and the Production Increase Proposal Extension Request (PIP Extension) to develop the procedural guidance to govern the Board's assessment of the PIP Renewal. The Board highlights the following considerations:

- The activities requested in the PIP Renewal do not represent any change from the scope of activities that have been carried out from 2018 to 2021;
- The Board's process for reconsidering the original PIP (Project Certificate No. 005, Amendment #2) and the PIP Extension (Project Certificate No. 005, Amendment #3) were largely conducted in writing; the PIP included a one-day Community Information session

hosted in Pond Inlet that enabled residents to provide feedback to the NIRB staff, which was conveyed to the Board;

- The Minister has directed that the Board consider the assessment of the PIP Renewal as a priority and requests the Board provide the Board’s reconsideration report and recommendations by August 26, 2022;
- Several parties indicated a preference for the Board’s assessment to be conducted entirely in writing;
- Designated Inuit Organizations, interested parties (including Intervenors 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 have previously provided the Board with thorough and extensive written submissions, some of which are likely relevant to the Board’s assessment of the PIP Renewal, and parties wishing to rely on existing relevant filings may simply reference their prior submissions and are not expected to duplicate their efforts;
- Some parties identified that the Board’s process should provide an opportunity for the collection of oral evidence from potentially impacted communities; and
- One party indicated that the reconsideration process should parallel the reconsideration process applicable to the Phase 2 Development Proposal (including the requirement for the Board to conduct a full Public Hearing).

While the Board recognizes and acknowledges the urgency of the situation as mentioned by parties in their comments and the priority and timelines urged by the Minister in his July 11, 2022 correspondence, the Board is also aware of the considerable interest of the potentially affected North Baffin communities in the Proposal and the need for the Board to conduct a thorough assessment of the Proposal that incorporates information provided to the Board since the Board’s previous assessments of the PIP and the PIP Extension. Accordingly, the Board has determined that the following process will support the Board’s decision-making in respect of the PIP Renewal.

1. The process for soliciting and responding to technical comments on the PIP Renewal will be confined to a **written process only** for Designated Inuit Organizations, Intervenors who participated in the Board’s previous assessments of the Mary River Project (and subsequent modifications), and those regulatory authorities with jurisdiction over components of the Mary River Project. On or before **noon (12:00 pm) MST on Tuesday, August 9, 2022**, these parties are invited to file their written comment submissions about the PIP Renewal. Appendix B attached to this correspondence provides parties with guidance regarding the approach and format for these comment submissions.
2. Interested members of the public are also invited to submit written comments as noted above. However, recognizing the high level of community interest in the Proposal, and respecting Inuit oral traditions, the full Board also plans to conduct a “hybrid” one-day informal Community Roundtable session (CRT) (including an evening session) in Pond Inlet on **August 16, 2022**. This CRT will be an informal proceeding similar to the CRT conducted by the Board during a Pre-Hearing Conference and will be focused solely on collecting oral comments from the communities. The Agenda for the CRT will be issued on **August 12, 2022**. NOTE: unfortunately, due to logistical limits, the Board will not be able to fly designated Community Representatives to Pond Inlet to attend the CRT in-person, but the Board, with the support and guidance of local partners in the North Baffin

Communities, will make teleconference and/or videoconference links available to the designated Community Representatives in the potentially affected North Baffin Communities so that they can share their comments in oral form during the time allocated to their Community during the CRT. In the coming days, the Board will issue invitations to solicit designated Community Representatives in each community and will provide more details regarding their participation.

3. As Baffinland bears the onus of proof in respect of the PIP Renewal, Baffinland will have an opportunity to file a final reply to the comment and CRT submissions in writing on or before **noon (12:00 pm) MST on Friday, August 19, 2022.**
4. Following the receipt of Baffinland's reply submission, the Board will consider the PIP Renewal and upon completion of decision-making, will, as required under s. 112(5) of the *NuPPAA*, provide a reconsideration report and recommendations to the Minister of Northern Affairs, (on behalf of the Responsible Minister(s)) for consideration.
5. As directed by the Minister under s. 114, the Board is undertaking the reconsideration of Project Certificate No. 005 associated with the PIP Renewal as a priority, however, due to logistical constraints and existing Board commitments that cannot be modified, the Board is unable to meet the Minister's requested August 26, 2022 timeline for decision-making. However, the Board remains committed to completing the reconsideration as expeditiously as possible and following the receipt of Baffinland's reply submission on August 19, 2022, the Board will advise the Minister and interested parties regarding the Board's timeline to provide the Board's Reconsideration Report and Recommendations.

In setting the process and timelines, the Board acknowledges the urgency and priority to be afforded to the reconsideration and has made its best efforts to undertake the reconsideration in an expeditious but thorough manner. While the Board recognizes that community members throughout the North Baffin may be busy pursuing traditional activities in August at the time of the Board's proposed CRT, due to significant logistical constraints in Pond Inlet, August 16, 2022 is the only feasible date for the CRT in the next 4-6 weeks, and the Board has no flexibility to modify this timing. The Board greatly appreciates the flexibility and commitment of designated Community Representatives and interested members of the public to providing their comments to the Board in the Board's previous assessments associated with the Mary River Project and in respect of the PIP Renewal.

PARTICIPANT FUNDING

The Board notes that several community-based and non-governmental organizations who previously participated as registered Interveners in the Board's previous assessments associated with the Mary River Project (including the recent Phase 2 Development Proposal) have provided comments in respect of the Proposal and expressed interest in participating in the Board's reconsideration process. As noted in the Board's Reconsideration Report and Recommendations associated with the Phase 2 Development Proposal, the Board's assessments have benefitted from the considerable interest and fulsome participation of a variety of Registered Interveners, including organizations whose participation was supported, in part, by the provision of participant funding. Accordingly, the Board requests that the Minister consider providing participant funding to enable these parties to continue their participation in the Board's assessment of the Proposal in accordance with the process and expedited timeline set out in this correspondence.

CONCLUSION

In addition to providing notice of the reconsideration to the Minister and the Proponent under s. 112(3) of the *NuPPAA*, and providing procedural guidance regarding the process and timing of the Board's reconsideration associated with the PIP Renewal, the Board is inviting the Minister to advise the Board and interested parties regarding the availability of participant funding in respect of the reconsideration.

The Board looks forward to conducting the reconsideration and attending the CRT in Pond Inlet on August 16, 2022. In the interim, should you have any questions regarding this notice and procedural guidance, please contact the NIRB's Executive Director, Karen Costello at kcostello@nirb.ca.

Sincerely,



Kaviq Kaluraq
Chairperson
Nunavut Impact Review Board

cc: Mary River Distribution List – Production Increase Proposal
Mary River Distribution List – Extension Request to Production Increase Proposal
Mary River Distribution List – Phase 2 Development Proposal
Sharon Ehaloak, Nunavut Planning Commission
Goump Djalogue, Nunavut Planning Commission
Stephanie Autut, Nunavut Water Board
Karén Kharatyan, Nunavut Water Board
Carson Gillis, Nunavut Tunngavik Incorporated
Jared Ottenhof, Qikiqtani Inuit Association
Olayuk Akesuk, Qikiqtani Inuit Association
Agnes Simonfalvy, Government of Nunavut
Adrian Paradis, Canadian Northern Economic Development Agency
Tracey McCaie, Crown-Indigenous Relations and Northern Affairs Canada
Jody Small, Environment and Climate Change Canada
Jane Chisholm, Parks Canada
Alasdair Beattie, Fisheries and Oceans Canada
Rob Johnstone, Natural Resources Canada
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
Mark Brooks, World Wildlife Fund
Zacharias Kunuk, Nunavut Independent Television Network

Attachment (2): Appendix A: Summary of Comments Regarding the PIP Renewal Proposal
Appendix B: Suggested Format for Parties' Final Written Submissions

APPENDIX A: SUMMARY OF COMMENTS REGARDING THE PIP RENEWAL PROPOSAL

On or before July 5, 2022, the NIRB received comments from regulatory authorities and Inuit organizations and members of the public that provided input on the scope and significance of the PIP Renewal Proposal. Specifically, the NIRB invited comment on the following:

- a) *Was the proposed modification included within the scope of the original project (and subsequent modifications) as previously assessed by the NIRB?*
- b) *Is the proposed modification consistent with the terms and conditions of the existing NIRB Project Certificate, or are changes to the Project Certificate necessary to reflect the modification?*
- c) *Does the proposed modification constitute a significant modification to the original project that is integrally linked to the original project (including as subsequently modified under any modification proposals that have been assessed and approved by the NIRB)?*
- d) *Does the proposed modification constitute a significant modification to the original project that is not integrally linked to the original project, and that has sufficient scope to be assessed as an independent project proposal?*

Overall, parties agreed that the proposed activities would likely require reconsideration of the terms and conditions of the Project Certificate No. 005, especially terms and conditions 179(a) and (b) regarding the limit on trucking and shipping of iron ore.

For the convenience of reviewers, the Board has prepared Table 2 that follows to provide a high-level summary of the comments provided by parties in response to the Board's request for comments on the PIP Renewal Proposal. Reviewers should be aware, however, that the summaries are provided for reviewers' convenience only and are not exhaustive. Parties wishing to gain a full understanding of comment submissions are encouraged to review the materials provided in their entirety from the NIRB's Public Registry via the NIRB Document ID numbers provided in Table 1 that follows.

Table 1. Listing of Comment Submissions Received

Party	NIRB Document ID
Nunavut Tunngavik Incorporated (NTI)	340633 & 340637
Qikiqtani Inuit Association (QIA)	340635
Government of Nunavut (GN)	340629
Government of Canada (GoC)	340630
Mittimatalik Hunters and Trappers Organization (MHTO)	340632
Ikajutit Hunters and Trappers Association (Ikajutit HTA)	340632
Hamlet of Sanirajak (Sanirajak)	340628
Oceans North (ON)	340634
Baffinland Iron Mines Corporation (Baffinland)	340636 & 340745

Table 2. Summary of Comments Received

TOPIC	PARTY	COMMENT SUMMARY
IMPACTS ASSESSMENT	NTI	Noted concerns that ecosystemic and socio-economic impacts associated with the current activities (including under the original PIP and PIP Extension) are not adequately monitored, mitigated, and managed.
	QIA GN GoC Baffinland	Activities in the PIP Renewal are the same activities as those assessed in the 2018 PIP and 2020 PIP Extension applications.
	MHTO	Stated that the current activities have already had significant effects on Inuit harvesting, marine wildlife, caribou, land use, and food security, and noted that these effects were not accurately predicted and were not adequately assessed during previous assessments for the original PIP and the PIP Extension. The PIP Renewal must be assessed to ensure that the effects likely to continue under the PIP Renewal are assessed.
	Ikajutit HTO	The activities proposed in the new application were not assessed in the previous assessment.
	Sanirajak	No change to the operation as operated by Baffinland since 2018.
	ON	Some activities were not assessed in the previous assessments, such as vessels convoys, shared marine mammal population with Greenland, and new information on underwater noise disturbance.
SIGNIFICANCE	NTI MHTO Ikajutit HTO ON	The PIP Renewal represents a significant modification.
	GN GoC Sanirajak Baffinland	The PIP Renewal does not represent a significant modification.
	QIA	The PIP Renewals represents a modification to the Mary River Project (ERP).
TERMS AND CONDITIONS	NTI QIA	The existing terms and conditions are not fully achieving their purpose for the necessary level of monitoring and mitigation and in a manner that reflects known effects of the existing Project. Project Certificate amendments beyond term and condition 179(a) and (b) are required to address concerns about existing Project effects and the PIP Renewal.
	NTI GoC	List of improved mitigation measures should be reflected in new terms and conditions.

TOPIC	PARTY	COMMENT SUMMARY
	QIA GN GoC Baffinland	Amendments are required to Term and Conditions 179(a) and (b).
	GN	The proposed modifications are consistent with the current terms and conditions.
	MHTO	The terms and conditions are not achieving their purpose as the effects of the project are different from anticipated. Therefore, a broader reconsideration of the Project Certificate terms and conditions is required, not limited to terms and conditions 179(a) and (b) only.
	Ikajutit HTO	Recognizing the existing effects on Inuit harvesting rights, it cautioned that any further modification extending the timeline on terms and conditions 179(a) and (b) would require revisions to ensure these provisions comply with Inuit rights under the <i>Nunavut Agreement</i> and <i>NuPPAA</i> .
	ON	The NIRB should consider that the effects of the terms and conditions are significantly different from those anticipated.
	ON	Cumulative effects are not sufficiently addressed in current monitoring and reporting as term and condition 110.
	ON	The working groups are not functioning as the term and condition 77.
	ON	The proponent is not implementing the direction of DFO as per term and condition 183.
PROCESS	NTI MHTO Ikajutit HTO ON	PIP Renewal requires a reconsideration process.
	QIA	Supports a review process.
	NTI	The reconsideration process can proceed in writing with accommodation/support for community to assure their full participation.
	GoC Sanirajak Baffinland	The reconsideration process could proceed solely in writing.
	QIA	Collect written submissions from most Parties and collection of oral evidence from impacted communities as teleconference or video conference.
	QIA GoC Sanirajak	Asked for an accelerated review of the PIP Renewal given the urgency of the timeline.

TOPIC	PARTY	COMMENT SUMMARY
	Baffinland	
	GN	No suggestion, the GN respects the Nunavut Planning Commission and the Board to determine if a reconsideration is warranted.
	MHTO	A public hearing is warranted, and should include, at a minimum the following steps: <ul style="list-style-type: none"> ▪ Baffinland filing an updated Impact Assessment; ▪ Baffinland filing any updated commitments; ▪ Parties filing evidence and presentation materials; ▪ Opportunity for participants to ask questions orally to Baffinland; ▪ Community roundtables; and ▪ Baffinland and Parties filing written submissions.
	MHTO Ikajutit HTO	An accelerated timeline for the reconsideration is not appropriate.
	Ikajutit HTO	Use a combination of a written and teleconference/videoconference hearing process. A strictly written process would fail to incorporate a meaningful participation of community members.
	Sanirajak	No in-person meeting is necessary.
	ON	In-person or video conference proceedings are warranted and the proceedings should be televised and recorded.
MATTERS OF IMPORTANCE	QIA	Conclusions from the NIRB Phase 2 Reconsideration Report are relevant to the new PIP Renewal application.
	QIA	The PIP Renewal process would provide an opportunity for a ‘check in’ on the implementation status of the 2018 and 2020 Project Stabilization Approach commitments.
	QIA	Any proposal beyond 2022 should be subject to further review.
	QIA	The Board should consider how the process can ensure there is sufficient time for impacted communities to develop and propose their recommendation on what the current Project Terms and Conditions amendments should be.
	GoC	Recommend that the NIRB rely on existing public records from previously assessed reconsideration phases, including Phase 2 Development Proposal.

TOPIC	PARTY	COMMENT SUMMARY
	MHTO	The Board is required to give importance to the tradition of Inuit oral communication and decision-making.
	MHTO Ikajutit HTO	Concern with the timing of this application by Baffinland as the Proponent knew about its expiration on December 31, 2021.
	Ikajutit HTO	The timing of Baffinland's request leaves the impression that Baffinland has a dismissive attitude and approach towards community engagement, and the concerns and issues the HTOs have expressed to date. The request happens in prime time of harvesting season when many community members are out on the land.
	ON	Do not believe there is an emergency with this application for the health and safety of the public as mentioned by Baffinland.
	Baffinland	Confirmed its sustained implementation of the commitments regarding the Project Stabilization Approach as the third-party compliance audit.

APPENDIX B: NIRB'S SUGGESTED FORMAT FOR PARTIES' WRITTEN COMMENT SUBMISSIONS

When developing written comment submissions for consideration by the Nunavut Impact Review Board (NIRB) in respect of the PIP Renewal, parties are respectfully requested to consider the following direction regarding suggested format.

For each issue raised, parties are asked to include a clear reference to the volume, document, section, and/or page number in Baffinland's PIP Renewal submission, or Supplemental Information Package where relevant information may be found. If a commenter wishes to reference information relevant to the PIP Renewal that has already been filed with the Board in the Board's previous assessments and monitoring of the Mary River Project (as amended), parties should either include the relevant excerpt providing the name of the document, date filed with the Board, party who provided the information, volume, section and/or relevant page. Please note that if the reference is too lengthy to be excerpted, provide a cross-reference to where the relevant information can be found and provide the reference information as requested in the previous sentence. Parties may find efficiencies in structuring submissions by issue. A tabular presentation as provided below is requested as a means of systematically organizing comment submissions and to assist with the compilation of submissions for the next steps of the NIRB's reconsideration.

Format and File Size

Parties must provide submissions in a fully functional, electronically searchable Word, Excel or unlocked PDF format. Parties should endeavor to limit the size of digital files to no larger than 10 MB.

Comment submissions should contain the following:

1. Executive Summary

Submissions must contain a non-technical executive summary of the major issues addressed in their comment submission. The summary should not exceed two pages.

The NIRB requires executive summaries to be provided in English and be translated into **Inuktitut**. Please note that parties are responsible for sourcing this translation.

2. Table of Contents

Submissions should contain a table of contents that identifies the main topics addressed in the submission.

3. Introduction

All submissions should contain a statement of the party's mandate and relationship to the project. Parties that have regulatory jurisdiction over the Mary River Iron Mine Project must also provide a description of the party's jurisdiction applicable to the PIP Renewal.

4. Specific Comments

For each issue included in the submissions, parties should provide the following:

- a. A description of the issue and references to relevant information;

- b. If the issue is addressed by the Proponent in the PIP Renewal or Supplemental Information Package, identify the Proponent’s conclusion(s) related to the issue;
- c. A statement regarding the conclusion(s) of the commenting party related to the issue, including reference to the justification/data/rationale supporting that conclusion;
- d. A brief discussion assessing the issue’s importance to the impact assessment process; and
- e. Any recommendation(s) to the NIRB with respect to the disposition of the issue, including whether or not the issue could be addressed through specific updates to the terms and conditions of Project Certificate No. 005 and/or other modifications to the existing monitoring and reporting requirements for the approved Mary River Iron Mine Project.

5. Summary of Recommendations

Finally, submissions to the NIRB should contain a *summary* of the recommendations to the Board with respect to:

- Whether Parties agree/disagree with the conclusions presented in the PIP Renewal or Supplemental Information Package provided by the Proponent regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures – and information supporting the parties’ position;
- Whether or not conclusions presented by the Proponent are supported by the analysis – and information supporting the parties’ position;
- An assessment of the appropriateness of proposed monitoring and mitigation measures – and information support the determination, along with any proposed alternative monitoring measures which may be more appropriate (if applicable); and
- Any comments regarding additional information which would be useful in assessing impacts – and reasons to support any comments made.

6. Suggested submission format in Table Form

Review Comment Number	
Subject/Topic	
References to the PIP Renewal, Supplemental Information Package or relevant excerpt from previously filed information in respect of the Mary River Project	
Summary (include Proponent’s conclusion if relevant and conclusions of commenting party)	
Importance of issue to the impact assessment process	
Detailed Review Comments	1. Gap/Issue 2. Agreement/Disagreement with conclusion 3. Reasons for disagreement with conclusion
Recommendation/Request	

This is **Exhibit “I”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*



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The views and perspectives of members of the HTOs is one critical component of the information which QIA requires to understand relevant information from Inuit in the region about the proposal’s impacts and to make accurate submissions on technical information as well as suggest necessary Project Certificate terms and conditions amendments.

A short extension of time would also allow QIA and NTI to review the submissions of other Inuit parties to ensure that the DIOs’ submissions are properly informed about potential impacts on Inuit from the proposal and properly addressed through recommendations to NIRB from the DIOs. The extremely short timeframe for this review leaves limited other opportunity for the DIOs to review information from Inuit in the impacted communities which is critical for the DIOs’ analysis of the proposal’s potential impacts on Inuit rights and what accommodations are needed to address those impacts.

QIA thanks NIRB in advance for considering this request and can provide further background information to support the request, should it be required.

Sincerely,

Jared Ottenhof
Director, Qikiqtani Nunilirijikkut
Qikiqtani Inuit Association

- cc. David Ningeongan, Chief Operating Officer, Nunavut Tunngavik Inc.
- Lisa Dyer, Director General, Canadian Northern Economic Development Agency
- Megan Lord-Hoyle, Vice President – Sustainable Development, Baffinland Iron Mines Corporation

This is **Exhibit “J”** to the
Affidavit of Jared Ottenhof
sworn before me at Iqaluit,
Nunavut, this 31st day of
May 2023



*A Commissioner for taking Affidavits in and
for the Nunavut Territory*

Cassel Kapolak

From: Karen Costello
Sent: July 26, 2022 3:42 PM
To: Jared Ottenhof; nirb info
Cc: DNingongan@tunnigavik.com; Dyer, Lisa (CANNOR); megan.lord-hoyle@baffinland.com; Romeyn Stevenson; Stephen Williamson Bathory; Steven Foulds; Lorraine Land; Virginia Mearns
Subject: RE: [EXTERNAL] QIA Comment Deadline Extension Request - BIMC 2022 MRP PIPR

Good day Jared,

The Board's is expressly following its normal commenting process (in no previous reconsideration has the Board permitted staggered commenting periods for various participants) and also the normal ordering of technical comment submissions followed by input from communities. In doing so, the Board is complying with its prior practice and the direction of the Minister to carry out its normal assessment of a project modification as is appropriate in the circumstances.

The Board is also mindful of the Minister's direction as to the priority and timing of the process and the request of intervenors to carry out this assessment on an expedited basis.

The larger substantive question as to what is necessary in the circumstances of this reconsideration for the Crown to fulfill its obligations to consult and accommodate the rights of Inuit remains a question for the Government of Canada to determine.

The Board continues to encourage parties to engage in dialogue outside of the Board's process. Recognizing QIA's planned meetings with the HTOs are August 4th and discussions could be beneficial to inform QIA's technical submissions and position in this review, the Board is providing an update to the timelines for submissions:

- Any additional technical comments in respect of the Production Increase Proposal Renewal are now due on or before noon (12:00 pm) MST Thursday, August 11, 2022; and
- Baffinland's final reply submission is due on or before noon (12:00 pm) MST on Friday, August 19, 2022.

The Board notes that the revised deadline of Noon MST Thursday, August 11, 2022 allows for 5 business days since the August 4, 2022 engagement with the HTOs. The revised deadline for comments will be circulated to all parties.

Regards,

Karen

Karen D. Costello, P. Geo FGC
Executive Director
Nunavut Impact Review Board
P.O. Box 1360
Cambridge Bay, Nu X0B 0C0
Direct phone 867 983-4608, Toll free 1-866-233-3033, fax 867-983-2594

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From: Jared Ottenhof <JOttenhof@QIA.ca>

Sent: July 26, 2022 12:01 PM

To: Karen Costello <kcostello@nirb.ca>; nirb info <info@nirb.ca>

Cc: DNingegon@tunngavik.com; Dyer, Lisa (CANNOR <lisa.dyer@canada.ca>; megan.lord-hoyle@baffinland.com; Romeyn Stevenson <RStevenson@QIA.ca>; Stephen Williamson Bathory <SWBathory@QIA.ca>; Steven Foulds <SFoulds@QIA.ca>; Lorraine Land <LLand@oktlaw.com>; Virginia Mearns <VMearns@QIA.ca>

Subject: RE: [EXTERNAL] QIA Comment Deadline Extension Request - BIMC 2022 MRP PIPR

Good Afternoon Karen,

Thank you for the email response to our extension request.

NIRB's response denies the opportunity for QIA and NTI, as Designated Inuit Organizations (DIOs), to have sufficient time to inform their written submissions to NIRB on impacts on Inuit related to the 2022 PIP, in order to ensure the DIOs fulfill their obligations under the Nunavut Agreement to properly represent the views of Inuit about the proposal's impacts and in order to ensure that the Crown's obligation to address and accommodate Section 35 impacts is fulfilled.

As NIRB is aware, DIOs are not simply another 'stakeholder' or random intervenor in a NIRB review. Their participation is guaranteed by the Nunavut Agreement, and is necessary in order to fulfill Nunavut Agreement commitments that impact review processes will address proposals' impacts on Inuit rights (in a context where the DIOs are the designated legal representative of those rights under the Nunavut Agreement).

In order for the DIOs to make submissions which are informed by input from Inuit in the impacted communities, there must be procedural steps and space to allow this to occur. NIRB's denial of the timeline extension request deprives QIA of the ability to ensure that its technical comments and overall submissions can reflect input from the impacted communities on the proposal's impacts. This is particularly a concern in view of the Inuit-provided evidence in the Phase 2 hearings, accepted in NIRB's final report on the Phase 2 review, that the current Project (including the production increases approved for 2019 – 2021) are resulting in impacts which were not properly foreseen or properly addressed in current adaptive management responses.

QIA is therefore writing to respond and request that NIRB consider two other ways in which the proposed NIRB review process can be adapted to ensure that the proper evidence is before NIRB, and that the DIOs are able to properly respond to the Minister about the sufficiency of the NIRB process in fulfilling procedural aspects of the consultation and accommodation requirements for the proposal, as the Minister is relying on the NIRB process to fulfill this constitutional obligation. QIA requests that:

- NIRB allow all parties (other than Baffinland) have an extension of time until Thursday August 11 for submissions; and
- NIRB allow the DIOs to make follow up written submissions after the oral evidence (which is a key component of the DIOs assessment of impacts on Inuit relevant to the DIOs' technical submissions and overall position on the adequacy of proposed avoidance, mitigation and other accommodation for impacts on Inuit) is shared and entered into the record in the Community Roundtable on August 16.

Thank you,
-jared

