Keith Morrison
Manager, Project Monitoring
Nunavut Impact Review Board
P.O Box 1360
Cambridge Bay, NU X0B 0C0

July 04, 2025

NIRB File #: 08MN053

Sent VIA Email: info@nirb.ca

Re: Comment Request for Baffinland Iron Mines Corporation's Mary River Project 2024 Annual Report

Hello Keith,

The Government of Nunavut (GN) thanks the Nunavut Impact Review Board (NIRB) for the opportunity to provide comments on the 2024 Annual Report for Baffinland Iron Mines Mary River Project, NIRB File #: 08MN053.

The GN has reviewed the 2024 Annual Report and related documents and has seven (7) comments, attached to this letter, to raise with the Board at this time. These comments are primarily concerned with missing information related to mitigation and monitoring programs, and inconsistency in their implementation. The GN also has concerns with the efficacy of technical working groups and their ability to meet their stated objectives as set out in the terms and conditions of the Mary River Project's certificate #005.

The GN has identified data gaps in the study design of the snow track surveys and height of land (HOL) caribou surveys and has recommended improvements for subsequent years. Similarly, the GN notes that the snow-dust concentration pilot study suffers from a small sample size, and that sample sizes are dissimilar for the two satellite imagery products utilized in the pilot. As such, the GN recommends a substantial increase in sample sizes prior to making any determinations about the relationship between ground-based samples and remote sensing information.

As noted by the Proponent, there has been a significant decline in compliance in helicopter minimum flight altitudes. The GN has made several recommendations for improvement and seeks an outline of corrective measures the Proponent will take to restore compliance and reduce potential impact to wildlife along flight paths.

There are concerns that technical environment working groups (MEWG/TEWG) are not functioning as intended, and that required revisions to the groups' terms of reference are not resolving the issues

faced by the working groups. The GN has put forward several recommendations to improve the function and efficacy of the working groups, including that a representative of the Board observe the meetings, that an independent chair is established for each, and that the Board solicit input from working group members on a regular basis to evaluate overall performance against the stated objectives within Project Certificate #005.

Noting the combination of an atypically short review period with the concurrent review of 4 other annual reports (now closed), the GN may have a subsequent submission related to this Annual Report. The GN recognizes that any supplementary comments would not be addressed in the context of revisions to this Annual Report. However, we would hope the Proponent would take steps to address any additional comments over the next year and provide an update on progress made in the 2025 Annual Report.

The GN appreciates participating in ongoing project monitoring through the NIRB process. Should there be any concerns or need for follow-up, please feel free to contact me at jbuller@gov.nu.ca.

Thank you,

Justin Buller
Interim Avatiliriniq Coordinator
Government of Nunavut

GN Comment # 01	
Department	Environment
Organization	Government of Nunavut
Subject/Topic	Snow Track Surveys
Terms and Conditions	54dii, 58f (Project Certificate No. 005, Amendment 05)
References	• Baffinland Iron Mines Corporation. 2024 Annual Report to the Nunavut Impact Review Board: Appendix G.5.1 – Mary River Project Terrestrial Environment 2024 Annual Monitoring Report. Part 3 (March 2025a). • Baffinland Iron Mines Corporation. 2024 Annual Report to the Nunavut Impact Review Board: Appendix G.5.1 – Mary River Project Terrestrial Environment 2024 Annual Monitoring Report. Part 4 (March 2025b). • Baffinland Iron Mines Corporation. 2023 Annual Report to the Nunavut Impact Review Board: Appendix G.5.1 – Mary River Project Terrestrial Environment 2023 Annual Monitoring Report (March 2024). • Baffinland Iron Mines Corporation. 2022 Annual Report to the Nunavut Impact Review Board: Appendix G.5.1 – Mary River Project Terrestrial Environment 2022 Annual Monitoring Report (April 2023). • Boulanger, J., Kite, R., Campbell, M., Shaw, J., Lee, D., & Atkinson, S. (2024). Estimating the effects of roads on migration: a barren-ground caribou case study. *Canadian Journal of Zoology*, 102, 476–493. https://doi.org/10.1139/cjz-2023-0121 • Chen, H.L., & Koprowski, J.L. (2019). Can we use body size and road characteristics to anticipate barrier effects of roads in mammals? A meta-analysis. *Hystrix: The Italian Journal of Mammalogy, 30(1)*,1–7. https://doi.org/10.4404/hystrix-00185-2019 • Government of Nunavut. Government of Nunavut Comments on the Mary River Project 2022 Annual Report (July 2024). • Severson, J.P., Vosburgh, T.C., & Johnson, H.E. (2023). Effects of vehicle traffic on space use and road crossings of caribou in the Arctic. *Ecological Applications,* 33(8): e2923. https://doi.org/10.1002/eap.2923 • Smith, A., & Johnson, C.J. (2023). Why didn't the caribou (*Rangifer tarandus groelandicus*) cross the winter road?
IDENTIFICATION OF ISSUE	

The GN recommended several changes to the Project's snow track survey study design in its review of the Project's 2023 Terrestrial Environment Annual Monitoring Report (GN, 2024). In reviewing the Proponent's 2024 Terrestrial Environmental Annual Monitoring Report, the GN has several outstanding concerns and recommendations that remain unaddressed, which it considers important given the Proponent's reporting of increased caribou presence near the Project.

IMPORTANCE TO REVIEW AND SUPPORTING RATIONALE

The 2024 Terrestrial Environment Annual Monitoring Report provides evidence that caribou presence near the Project may be increasing. For example, caribou were observed during height-of-land (HOL) surveys in 2024 for the first time in over a decade and were also detected by motion-triggered wildlife cameras for the first time since that program began.

As noted by the Proponent:

> "The change in observations in 2024 may suggest caribou numbers are beginning to increase, and more caribou may be seen in the Project footprint in coming years." (Baffinland, 2025b, p. 138)

If caribou are indeed starting to have increased interactions with the Project, monitoring programs designed to detect and assess these interactions must be refined to ensure they collect the most useful data possible.

The GN recommended several changes to the Project's snow track survey study design in response to the Proponent's 2023 Terrestrial Environmental Annual Monitoring Report (GN, 2024). The GN notes that the Proponent included some changes based on these recommendations in the 2024 Terrestrial Environmental Annual Monitoring Report.

Some of the GN's recommendations have not been adopted by the Proponent and remain outstanding, including on the following topics:

<u>Detection Range</u>

The Proponent states that the purpose of snow track surveys is to "[m]onitor the patterns of movement and response of caribou and other wildlife to Project-related activities based on their observable tracks in proximity to roadways" (Baffinland, 2025a, p. 121).

Section 9.1.1 of 2024 Terrestrial Environmental Annual Monitoring Report outlines the data collected for each animal track observed during surveys. However, the Terrestrial Environmental Annual Monitoring Report does not provide the distance from the road at which each track was first detected. The GN believes that recording this distance would help assess whether the survey's detection range is sufficient to adequately capture species-specific responses to the road.

The GN's recommendation is based on the understanding that different species may react to roads at varying distances, potentially linked to body size (Chen and Koprowski, 2019). For example, larger species like caribou may alter their movements in response to roads and traffic at distances ranging from several hundred of metres a few kilometres (e.g., Boulanger et al.,

2024; Severson et al., 2023; Smith and Johnson, 2023), whereas smaller organisms, like lemmings, may respond to roads at distances of only a few metres.

If the buffer distance that the surveyors are using is too small, the Proponent may not be capturing tracks from caribou and other wildlife that are responding to the road. Instead they may be only capturing smaller organisms, which would not be achieving the stated objective of the monitoring program.

Presentation/Assessment of Interannual Trends

Figure 9-3 summarizes the number of tracks observed by species across years. However, the GN notes that the data presented in this figure do not account for variation in survey effort. The exclusion of this information impacts the interpretation of interannual trends. For example, in 2024, the proponent notes that "12 surveys [were] completed after recent snowfall between February and November 2024" (Baffinland, 2025a, p. 122). However, the GN notes that in the previous year, the Proponent conducted 6 snow track surveys (Baffinland, 2024) and in 2022, the Proponent conducted only 4 snow track surveys (Baffinland, 2023).

Variable survey effort over time may lead to conclusions that appear to show increased or decreased animal presence near the Project, when the variation in data collected is a result of the number of surveys undertaken. Adjusting the data collected for survey effort would be one approach to help account for this variability so that the data are more comparable across years. An absence of data that are comparable across years can lead to conclusions or trends that are not accurate.

REQUEST(S)/RECOMMENDATION(S)

The GN recommends that the Proponent undertake the following activities:

1. Record the distance of each track from the road at the time of first observation. This information should be summarized by species in future annual reports.

2. Present snow track frequency data adjusted for survey effort.

GN Comment # 02	
Department	Environment
Organization	Government of Nunavut
Subject/Topic	Snow Dust Concentration Pilot Study
Terms and Conditions	36, 50, 54d, 58c, 187, and 188 (Project Certificate No. 005, Amendment 05).
References	• Baffinland Iron Mines Corporation. Appendix G.5.1 – Mary River Project Terrestrial Environment 2023 Annual Monitoring Report (March 2024). • Baffinland Iron Mines Corporation. Appendix G.5.1 – Mary River Project Terrestrial Environment 2024 Annual Monitoring Report (March 2025). • Government of Nunavut. Government of Nunavut Comments on the Mary River Project 2022 Annual Report (July 2023). • Government of Nunavut. Government of Nunavut Comments on the Mary River Project 2023 Annual Report (July 2024).

IDENTIFICATION OF ISSUE

In response to comments from the GN and the Qikiqtani Inuit Association (QIA) on the 2023 annual report (Baffinland, 2024), the Proponent made several adjustments to the snow sampling study that compares measured snow dust concentrations with the satellite-derived Snow Darkening Index (SDI). In reviewing the 2024 annual report (Baffinland, 2025), the GN notes that these adjustments are beginning to produce meaningful results and encourages the Proponent to continue the study and substantially increase sample sizes. The GN views this study as an essential component for the monitoring and assessment of wildlife responses to the Project.

IMPORTANCE TO REVIEW AND SUPPORTING RATIONALE

In 2022, the Proponent initiated a pilot study to measure dust concentrations in snow and correlate these with a satellite-derived index of dust concentration referred to as the Snow Darkening Index (SDI). The advantage of directly measuring dust concentrations in snow rather than relating passive sampling dust fall data to the SDI is that, unlike snow dust concentration, passive sampling (and the dust model used in the Project's FEIS) does not account for dust that is re-distributed by wind after it has initially fallen to the ground. Thus, passive sampling (and modelling) will tend to underestimate the true spatial extent of dust distribution from the Project.

Additionally, establishing a relationship between dust concentrations in snow and a remote-sensing modality will provide a powerful tool for the Proponent and others in Nunavut to accurately monitor dust originating from anthropogenic sources. The GN views this study as an essential component for the monitoring and assessment of wildlife responses to the Project.

As such, in previous years, the GN has urged the Proponent to fully develop this pilot project (GN, 2023; GN, 2024)

As noted in Table 7-1 of the 2024 TEAMR:

> "To increase the number of samples for the snow sampling pilot study, as recommended by the QIA and the GN (QIA DF #11 and GN AR #5; Baffinland Iron Mines Corporation 2024), improvements to sample collection were implemented, including (1) using satellite acquisition dates and footprints to plan sampling dates and locations, (2) extending the sampling period to late May, (3) sampling on cloud-free days, and (4) sampling a variety of dust concentrations." (Baffinland, 2025, p. 47)

Additionally, Section 7.4.4 of the 2024 TEAMR report states that:

> "Using the rational equation presented in Mauro et al. (2015) for mineral dust versus SDI measured from hyperspectral data, a non-linear regression model was fit to the Landsat data with significant coefficients (P > 0.1, residual standard error = 0.0151; Figure 7-21) ... A non-linear regression model did not fit to the Sentinel-2 data. Additional samples may be required to increase the sample size. Models are needed for Landsat and Sentinel-2 data to have full coverage of the study area for each year of analysis. The continuation of the pilot study is being evaluated in relation to the need for and viability of improvements to experimental design and comparison with the current method using the passive dustfall monitoring data." (Baffinland, 2025, p. 108).

The GN notes that with a sample size of 33, the study identified a statistically significant non-linear relationship between SDI and snow dust concentration using Landsat Imagery. The failure to detect a similar relationship with Sentinel-2 data is potentially due to the much smaller sample size, as only 11 samples were used compared to 33 for Landsat.

These findings indicate the need to increase the sample size for Sentinel data. Moreover, the GN recommends a substantial increase in sample sizes for both Landsat and Sentinel datasets to improve the precision of the results. The measured dust concentrations in snow (Figure 7-21; Tables 7-12 and 7-13) span four orders of magnitude, yet the current sample sizes—33 for Landsat and 11 for Sentinel—are insufficient to robustly define relationships of this scale.

Continuation of the snow study by the Proponent with increased sample sizes, may help detect patterns in the data collected and provide additional useful information to better interpret the results. In the GN's view, the ongoing work of the study is essential for the monitoring and assessment of wildlife responses to the Project.

REQUEST(S)/RECOMMENDATION(S)

The GN requests that the Proponent continue the snow study with the goal of increasing the snow dust concentration sample size at least 10-fold for comparison with satellite imagery (Landsat and Sentinel).

GN Comment # 03	
Department	Environment
Organization	Government of Nunavut
Subject/Topic	Caribou Behaviour Monitoring
Terms and Conditions	53b, 54b, 58b (Project Certificate No. 005, Amendment 05)
References	• Agnico Eagle Mines Limited: Meliadine Division, Appendix 26 – 2024 Terrestrial Environment Management and Monitoring Plan Annual Report (March 2025) • Baffinland Iron Mines Corporation. Appendix G.5.1 – Mary River Project Terrestrial Environment 2024 Annual Monitoring Report (March 2025).

IDENTIFICATION OF ISSUE

The 2024 Terrestrial Environmental Annual Monitoring Report indicates that caribou observed walking during HOL surveys or follow-up monitoring are currently classified as showing no response to Project disturbance. However, studies at other mine-road complexes in Nunavut suggest walking increases near infrastructure and traffic, indicating it may reflect a disturbance response.

To improve interpretation of the data, the GN recommends the Proponent refine the study methods to collect more detailed data on walking behaviour. This will help the Proponent, the GN and other reviewers better assess whether walking represents a true response to disturbance.

This information will help the GN evaluate the effectiveness of the mitigations, monitoring and management being implemented by the Proponent to avoid or limit impacts to caribou.

IMPORTANCE TO REVIEW AND SUPPORTING RATIONALE

The Project uses HOL surveys and on-the-ground monitoring to examine how caribou respond to Project-related activities and infrastructure. The 2024 Terrestrial Environmental Annual Monitoring Report provides an overview of these activities, stating,

> "Caribou occurrences at or near the [Potential Development Area] are monitored through HOL monitoring (refer to Section 9.3) during the caribou calving period and through on-the-ground monitoring through continual incidental sightings (often by haul truck drivers; refer to Section 9.6). Where caribou are observed on or near the Tote Road, the caribou decision framework (Figure 9-14) comes into effect and guides the action of road users (Baffinland Iron Mines Corporation 2023d). Site personnel are informed of the caribou

> decision framework and trained to respond appropriately to these scenarios. Concurrently, the Environment Staff are notified of near-project observations and complete follow-up behavioural monitoring." (Baffinland, 2025, p. 162)

With respect to HOL surveys, the 2024 Terrestrial Environmental Annual Monitoring Report indicates that fifteen caribou were observed in the Potential Development Area (PDA) during the HOL surveys in 2024. However, no behavioural data were provided by the Proponent for these observations. No explanation is provided explicitly by the Proponent for the absence of this information.

Concerning follow-up behavioural monitoring, the 2024 Terrestrial Environmental Annual Monitoring Report states that:

> "Fifty-one caribou incidental observations during 22 monitoring events were recorded along the Tote Road in 2024. As shown in Figure 9-15, most caribou observations occurred in June (43), but also in May (5), October (2), and August (1). Caribou were observed as near as 20 m and as far as 4 km from the Tote Road (Photo 9-14 and Photo 9-15). No adverse behaviour toward the Tote Road and passing vehicles was noted during the 22monitoring events. Behaviours noted included foraging/feeding, bedded animals, and animals travelling at a 'walking pace'." (Baffinland, 2025, p. 163)

This summary demonstrates that the Proponent does not categorize walking as a potential behavioural response to Project activities. However, caribou behaviour studies at other mine-road complexes in Nunavut have demonstrated increases in walking amongst caribou as they approach infrastructure or when traffic passes, suggesting that walking is in part an adverse response (AEM 2023, 2024). For example, a caribou behavioural study conducted at the Meliadine Project found that:

> "…[b]oth response only and walking, in addition to response models, showed an increased proportion of response closer to infrastructure. This supports the continued consideration of walking behaviour as a potential response to disturbance for caribou." (Agnico Eagle, 2025, p. 168)
>
> And
>
> "…[c]aribou were statistically more likely to be walking (a potential response or non-response variable), alert, or running within survey intervals where there was a disturbance (i.e., vehicle traffic). Inclusion of walking as a potential response behaviour may represent a milder response to disturbance events than the other two behaviours, representing a spectrum of possible reactions when disturbed…" (AEM, 2025, p. 169)

For these reasons, the GN believes that adjustments to the Project's behavioural monitoring methodology are required to collect additional information to help determine whether walking represents a response or non-response to disturbance.

REQUEST(S)/RECOMMENDATION(S)

The GN requests that the Proponent undertake the following:

1) Provide a clear explanation for the lack of behavioural data from the HOL observations.

2) Amend relevant behavioural monitoring methodology for HOL surveys and follow-up behavioural monitoring to collect additional information on caribou walking behaviour as ‘toward’, ‘parallel to’ or away from Project disturbance (e.g., infrastructure and mine-related activities).

GN Comment # 04	
Department	Environment
Organization	Government of Nunavut
Subject/Topic	Helicopter Flights
Terms and Conditions	59, 71 and 72 (Project Certificate No. 005, Amendment 05).
References	• Baffinland Iron Mines Corporation. Appendix G.5.1 – Mary River Project Terrestrial Environment 2024 Annual Monitoring Report (March 2025). • Government of Nunavut. Government of Nunavut Comments on the Mary River Project 2023 Annual Report (July 2024). • Nunavut Impact Review Board. NIRB Project Certificate No. 005, Amendment 005 (November 2023)

IDENTIFICATION OF ISSUE

The GN has two main concerns regarding the Proponent's helicopter flight activities as presented in the 2024 Terrestrial Environmental Annual Monitoring Report. First, the Proponent has not explained or proposed corrective actions for the lowest compliance levels since 2016. Second, there is no discussion of reviewing or updating flight corridors to avoid key caribou areas.

The GN considers it essential for the Proponent to demonstrate concrete actions aimed at minimizing the impacts of aircraft activity on caribou.

IMPORTANCE TO REVIEW AND SUPPORTING RATIONALE

<u>Inter-annual Trends in Flight Altitude Compliance</u>

In the 2024 Terrestrial Environmental Annual Monitoring Report, the Proponent indicates that, "[n]on-compliant flights increased to 27.72% in 2024, higher than the past six years (3.78% to 8.41%) but comparable to 2017 (26.61%)." (Baffinland, 2025, p. 35). Despite this significant decline in compliance with helicopter flight altitude requirements, the Proponent does not outline any adaptive management measures to address the issue.

<u>Flight Corridors Concerning Caribou</u>

Terms and Conditions 59 of the Project Certificate states that:

> "The Proponent shall ensure that aircraft maintain, whenever possible (except for specified operational purposes such as drill moves, take offs and landings), and subject to pilot discretion regarding aircraft and human safety, a cruising altitude of at least 610

metres during point to point travel when in areas likely to have migratory birds, and 1,000 metres vertical and 1,500 metres horizontal distance from observed concentrations of migratory birds (or as otherwise prescribed by the Terrestrial Environment Working Group) and use flight corridors to avoid areas of significant wildlife importance…" (NIRB, 2023, p. 129)

Concerning the flight corridors for avoiding areas of significant wildlife importance, section 5.2.1 of the report states that:

> "Only the key moulting area for Snow Geese was identified for helicopter avoidance in 2024. No locations or boundaries of areas prescribed explicitly by the TEWG or areas of observed concentrations of other migratory birds were identified in 2024." (Baffinland, 2025, p. 24)

As outlined in the GN's response to the Proponent's 2023 annual report (GN, 2024), it remains a significant concern to the GN that after more than a decade of operations, the Proponent has not undertaken any revisions to its helicopter flight corridors, as required under Project Certificate Term and Condition 59. The Project now has access to over 10 years of flight data, alongside current and robust information on caribou distribution from incidental observations, HOL surveys, remote camera data, recent aerial surveys (e.g., Section 9.5, Baffinland 2024), and the GN's collaring program—all of which are available to the Proponent.

Given the availability of this information, a review of the current flight corridors is warranted and should be conducted in collaboration with the TEWG to ensure that helicopter traffic avoids areas of high caribou use. Failure to apply these data toward improving mitigation measures represents inadequate compliance with Term and Condition 59 and is inconsistent with the Proponent's stated commitment to adaptive management.

REQUEST(S)/RECOMMENDATION(S)

The GN requests that the Proponent undertake the following:

1) Explain the significant decline in compliance with helicopter minimum flight altitudes in 2024.

2) Outline the corrective measures that will be taken to address this decline and restore compliance to levels at least consistent with the previous five years (i.e., ~95% compliant).

3) In collaboration with the TEWG, initiate an immediate evaluation of the Project's helicopter flight corridors in relation to caribou distribution and movement patterns. This assessment should incorporate Inuit Qaujimajatuqangit and Inuit Qaujimaningit, as well as recent scientific data from incidental observations, HOL surveys, remote camera monitoring, aerial surveys, and satellite collaring. The TEWG should work to identify areas of high caribou importance and determine whether these areas can be effectively avoided by adjusting flight corridors.

GN Comment # 05	
Department	Environment
Organization	Government of Nunavut
Subject/Topic	Terrestrial Baseline Information – Steensby Inlet
Terms and Conditions	N/A
References	• Baffinland Iron Mines Corporation. Mary River Project Terrestrial Environment 2024 Annual Monitoring Report (March 2025). • Nunavut Impact Review Board. NIRB Project Certificate No. 005, Amendment 005 (November 2023)

IDENTIFICATION OF ISSUE

Based on the GN's review of the 2024 AR materials, it remains unclear what specific terrestrial environment/wildlife studies the Proponent plans to undertake before the start of construction at Steensby.

IMPORTANCE TO REVIEW AND SUPPORTING RATIONALE

The GN notes that there has been significant interest among various parties in updating baseline information before the construction of the Project's Steensby components (e.g., rail and port). For example, Commitment Igloolik HTA-1 from the Production Increase Proposal Renewal states:

> "Baffinland will work with the Hamlets and HTOs of Igloolik and Sanirajak to carry out additional baseline studies for marine, terrestrial, and avian wildlife related to Steensby. This could begin as early as 2023." (NIRB, 2023, p. 107)

Additionally, the GN notes that the 2024 AR states that,

> "…[e]ffects to terrestrial wildlife, and in particular key issues such as movement and migration, collaring and supplemental baseline work for Steensby, as well as potential effects of caribou eating vegetation with dust, continue to be expressed in 2024 consultation activities… " (Baffinland, 2025, p. 188)

Concerning this, the Proponent includes Table 4:27 (Baffinland, 2025, pp. 339–340), which lists supplemental baseline studies which the Proponent has undertaken since 2020. However, the GN notes that this work appears to be almost exclusively restricted to the marine environment.

Regarding future work, the 2024 AR states:

> “Activities planned to be undertaken along the Steensby Railway alignment or at Steensby Port in 2025, include a further baseline data collection in advance of the commencement of construction in 2025 or 2026. ” (Baffinland, 2025, p. 39)

Based on the GN’s review of the AR materials, it remains unclear what specific terrestrial environment/wildlife studies the Proponent plans to undertake before the start of construction at Steensby.

REQUEST(S)/RECOMMENDATION(S)

The GN requests that the Proponent provide a detailed update on what baseline studies the Proponent is planning to undertake concerning the terrestrial environment/wildlife prior to Steensby components construction. Additionally, the Proponent should identify which parties it will engage with regarding baseline studies for the terrestrial environment in the Steensby area.

GN Comment # 06	
Department	Environment
Organization	Government of Nunavut
Subject/Topic	Terms of Reference – Terrestrial & Marine Environmental Working Groups
Terms and Conditions	49, 77 (Project Certificate No. 005, Amendment 05)
References	• Baffinland Iron Mines. 2024 Annual Report to the Nunavut Impact Review Board: Appendix C.3 Environment Working Groups Terms of Reference (May 2025) • Nunavut Impact Review Board. NIRB Project Certificate No. 005, Amendment 005 (November 2023)

IDENTIFICATION OF ISSUE

Baffinland Iron Mines (Baffinland or the Proponent) included updated Terms of Reference (ToR) for the Project's Terrestrial Environment Working Group (TEWG) and Marine Environment Working Group (MEWG) in its 2024 annual report materials (Baffinland, 2025). The Government of Nunavut (GN) believes that both the process used by the Proponent to finalize these ToR and the content of the submitted ToRs are inconsistent with the relevant Terms and Conditions governing these working groups in the Project Certificate.

IMPORTANCE TO REVIEW AND SUPPORTING RATIONALE

The GN, represented by the Department of Environment, has been a member of the TEWG and MEWG since its inception in 2012. The requests to update the ToR for these groups came at the behest of several members of the TEWG and MEWG, including the GN, due to concerns that the groups were not meeting their intended objectives. The GN drafted previous versions of a revised ToR for the MEWG and TEWG.

Terms and Conditions 49 and 77 of Project Certificate No. 005, Amendment 005 (Project Certificate) describe the requirements for the TEWG and MEWG. For example, Term and Condition 49 states:

> "The Terrestrial Environmental Working Group (TEWG) will provide advice, guidance and enforceable recommendations regarding: adding to and improving baseline information, mitigation measures for the protection of the terrestrial environment, monitoring of effects on the terrestrial environment, assessing the accuracy of impact predictions, the development and implementation of adaptive management plans, sharing of relevant Inuit

> Qaujimajatuqangit, scientific and/or technical knowledge and industry best practice, and, consideration of project changes that may be required to make sure the management of negative impacts is effective and that lasting damage to the terrestrial environment is prevented…
>
> The Terms of Reference (ToR) for the TEWG shall be revised to include the following requirements…
>
> b) That the Working Group's decision-making process be amended to provide that it must occur on a consensus basis between all working group member parties, with all votes and decisions in writing and recorded by the chair.
>
> c) That the Working Group's recommendations be recognized as enforceable recommendations (i.e. will be implemented by the Proponent), with provision that the Proponent may request not to enforce the recommendation at which point the matter shall go to an independent third party (agreed upon by the Proponent, QIA, and the Government of Canada) for dispute resolution…" (NIRB, 2023, p. 35)

However, despite the submission clause "b)" above, these ToR were submitted by the Proponent to NIRB as "final" without consensus from the GN or other TEWG/MEWG members. No decision-making process or vote was held at the TEWG or MEWG meetings to achieve consensus on these ToR. In the absence of consensus from the members of the TEWG or MEWG on the ToR, the GN views these documents to be non-binding and an interim measure to be used until an independent chair is in place, when a binding ToR reached by consensus of the members can potentially be reached and implemented.

Concerning the content of the ToRs, the GN has several remaining outstanding concerns. One major concern includes the ability of the TEWG/MEWG to advance enforceable recommendations. For example, the TEWG ToR states, "[f]or greater clarity, any recommendations accepted by Baffinland shall be treated as enforceable recommendations." (Baffinland, 2025, p. 94). However, the GN notes that the process outlined in the TEWG and MEWG Terms of Reference for advancing items to enforceable recommendations enables the Proponent to veto their progression (Figure D7; Baffinland, 2025, pp. 34–35).

Additional, outstanding concerns regarding the content of the TEWG and MEWG ToR include:

- Duration of and processes to appoint an independent chair.
- Requirements for member organizations to select their representatives and vote on recommendations.

In the GN's view, it is unlikely that these revised ToR will allow for enforceable recommendations to be passed by the TEWG and MEWG, as required in the Project Certificate. However, the GN recognizes that an independent chair is needed as soon as possible to determine whether these concerns can be addressed. As such, the GN will continue to participate in these groups while continuing to evaluate their efficacy and compliance with the Project Certificate.

Should certain requirements of the ToR conflict with the GN's duties as set out by the GN's mandate, policies, legislation and/or the Terms and Conditions of the Project Certificate, the GN retains discretion as to the applicability of these provisions and whether/how they are carried out

by GN representatives of the MEWG/TEWG. Additionally, the GN maintains discretion as to determine which representatives it appoints to participate in these groups, as needed to fulfill its role as outlined in Terms and Conditions 49 and 77.

REQUEST(S)/RECOMMENDATION(S)

The GN requests that the Proponent undertake the following:

1. Provide a definition and explanation of “enforceable recommendations.”

2. Provide a definition and explanation of “consensus.”

The GN requests that the NIRB:

1. Continue to monitor the effectiveness of these working groups by sending a NIRB representative to MEWG/TEWG meetings as an observer.

2. Solicit input from MEWG/TEWG members periodically now and after the establishment of an independent chair to evaluate whether the MEWG and TEWG are meeting their stated objectives as set out in the Terms and Conditions of the Project Certificate.

GN Comment # 07	
Department	Environment
Organization	Government of Nunavut
Subject/Topic	Commitments
Terms and Conditions	49, 77 (Project Certificate No. 005, Amendment 05)
References	• Baffinland Iron Mines. 2024 Annual Report to the Nunavut Impact Review Board (May 2025) • Nunavut Impact Review Board. NIRB Project Certificate No. 005, Amendment 005 (November 2023)

IDENTIFICATION OF ISSUE

Baffinland's 2024 Annual Report (AR) contains two incorrect transcriptions of Project Certificate Terms and Conditions 49 and 77. In both instances, the word "enforceable" appears to be omitted where it would precede the word "recommendation" when it is first mentioned.

The GN emphasizes that the omission of the word "enforceable" in the Proponent's annual report creates an inconsistency with Terms and Conditions 49 and 77, as defined under the Project Certificate. It may also affect the interpretation of the Terms and Conditions and impact reviewers' ability to assess the Proponent's compliance with the Project Certificate. The GN notes that any changes to the Project Certificate or its Terms and Conditions must follow NIRB's formal review process and receive Ministerial approval.

IMPORTANCE TO REVIEW AND SUPPORTING RATIONALE

Terms and Condition 49 of the Project Certificate states, "The Terrestrial Environmental Working Group (TEWG) will provide advice, guidance and enforceable recommendations…" (NIRB 2023, p. 35)

Similarly, Term and Condition 77 of the Project Certificate reads, "The Marine Environment Working Group (MEWG) will provide advice, guidance and enforceable recommendations…" (NIRB 2023, p. 49)

However, the word *"enforceable"* has been removed in the 2024 AR where Term and Condition 49 and 77 have been reproduced. These instances occur on pages 190 and 280 of the 2024 AR (Baffinland, 2025).

The GN notes that this apparent transcription error could affect reviewers' understanding of the relevant Terms and Conditions. The GN notes that parties (including project proponents) cannot unilaterally modify Terms and Conditions in a Project Certificate. Any proposed changes to the Project Certificate must follow the processes set out in the Nunavut Agreement and the *Nunavut Planning and Project Assessment Act* and require approval by the responsible Minister.

REQUEST(S)/RECOMMENDATION(S)

The GN requests that the Proponent ensure the correct transcription of Terms and Conditions in their annual report (for 2024 and any future reports), as set out in their Project Certificate.