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Sent by email to:

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Dear Ms. Filiatrault, Ministers Alty, Chartrand, Thompson, and MacKinnon, and Ms. Pégeot:

Re: Request for reconsideration under s. 112 of the *Nunavut Planning and Project Assessment Act* – Mary River Project - NIRB File No. 08MN053

A. Introduction and relief requested

We represent the Arviq Hunters and Trappers Organization (the “Arviq HTO” or “our client”). Membership in the Arviq HTO is open to all Inuit who reside in the community of Naujaat under the *Nunavut Land Claims Agreement* (1993) (the “Agreement”).¹ We are writing to you regarding Baffinland Iron Mines Corporation’s (“Baffinland” or the “Proponent”) Mary River Project (NIRB File No. 08MN053). As set out in detail below, Arviq HTO requests that the Nunavut Impact Review Board (the “NIRB” or “Board”) conduct a reconsideration of the terms and conditions of the Project Certificate for the Mary River Project under s. 112 of the *Nunavut Planning and Project Assessment Act* (the “Act”).² More particularly Arviq HTO seeks a reconsideration of those Terms and Conditions pertaining to the proposed southern railway, port and shipping components of that Project.

Arviq HTO’s members are Aboriginal people currently exercising their inherent rights as protected by s. 35 of the Canadian *Constitution Act, 1982*³ to harvest wildlife in their territory, and in accordance with the traditional use and access of their ancestors. The rights are not frozen in time and the modern exercise of the right, and any related and incidental rights to the harvest are also constitutionally protected under s. 35 and s. 52. The access to, and use of, the wildlife is also recognized and affirmed in the Agreement.⁴ The Agreement is a modern treaty with the Crown under s. 35 of the *Constitution Act, 1982*,⁵ and thus the inherent Aboriginal rights and the modern treaty rights contained within it, including the rights to harvest, have the status of constitutionally protected rights under s. 35.⁶

Under the Agreement and as part of the modern treaty, our client is also charged with stewardship, including the right and duty to manage wildlife harvesting by its members.⁷ This is an integral part of the system for regulating wildlife management that exists to protect Inuit harvesting rights. It is a critical reflection of the principles and priorities of Inuit wildlife management, and the responsibility to conserve and protect wildlife and their habitat.⁸ This

¹ *Nunavut Land Claims Agreement*, May 25, 1993, s 5.7.2 [NLCA].

² *Nunavut Planning and Project Assessment Act*, SC 2013, c 14, s 2, s 112 [the “Act” or “NPPAA”].

³ *Schedule B to the Canada Act 1982* (UK), 1982, c 11, s 35 [*Constitution Act, 1982*].

⁴ NLCA, s 5.1.2(a)-(b).

⁵ *Constitution Act, 1982*, s 35; NLCA, s 2.2.1.

⁶ *Constitution Act, 1982*, s 35.

⁷ NLCA, s 5.7.1, 5.7.3.

⁸ NLCA, s 5.1.2-5.1.3.

includes the right and duty to represent its members' interests regarding their stewardship responsibilities related to harvesting rights.⁹

Under s. 35 of the *Constitution Act, 1982*, the Crown has a duty to consult and to substantially address the concerns of those exercising their constitutionally protected treaty rights. In the present case the inherent and modern treaty rights are well established as existing rights. The Crown is required to consult and accommodate our client as they exercise their existing rights and responsibilities, and any time the Crown contemplates action that could threaten their constitutionally protected harvesting rights.¹⁰ The Crown knows and has known that Baffinland's Mary River Project threatens the exercise of our client's rights and responsibilities. Our client is especially concerned by the impacts and cumulative effects of Baffinland's long-delayed plan to construct and operate a railway line between the Mary River Mine and Steensby Inlet, to construct and operate a seaport at Steensby Inlet, and to ship iron ore from the seaport southward through Foxe Basin and the Hudson Strait. These proposed activities are collectively referred to herein as the "Steensby Project". They were originally approved by the Board in 2012 in Project Certificate No. 005.¹¹

With respect, the review leading to the Board's approvals of the Project was flawed and was conducted without seeking and facilitating the participation of Arviq HTO. The review is also long outdated. The science has changed, the Project has changed and our client's modern exercise of their treaty rights continues. The Mary River Project's past operations and proposed changes have impacted and further threaten our client's s 35 rights and interests. The Supreme Court of Canada has been clear that consultation is iterative. Our clients have a right to be consulted today and throughout the planning, development and operation of the Mary River Project, including notably the Steensby Project, and their constitutional right to exercise their s. 35 rights cannot be unjustifiably infringed. Our client remains deeply concerned that the Crown has breached its duty to consult and accommodate them in relation to the Project. Arviq HTO will continue to raise its concerns and demand meaningful and fulsome consultation from the Crown.

In addition, as detailed in this letter, our client requests the NIRB conduct a reconsideration, under s. 112(1) of the Act, and/or at the direction of the responsible Minister under s. 112(2).¹² Our client requests that the NIRB reconsider all Terms and Conditions ("T&Cs") contained in Project Certificate No. 005, Amendment 005, as amended, (the "Project Certificate") to ensure the preservation of our client's harvesting rights and to ensure no wildlife populations and their habitats suffer unacceptable harm from the Steensby Project.¹³ Our client particularly urges the Board to reconsider allowing the Steensby Project to go ahead at all, given the lengthy and unexplained delays in implementation. Further our client requests that the Board revisit the

⁹ See e.g. NLCA, s [5.7.15](#), NLCA, s [2.2.1](#) granting HTOs the power to pursue litigation on behalf of their members.

¹⁰ *Constitution Act, 1982*, s [35](#); *R v Sparrow*, [\[1990\] 1 SCR 1075](#); *Delgamuukw v. British Columbia*, [\[1997\] 3 SCR 1010](#); *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005 SCC 69](#); *Haida Nation v British Columbia (Minister of Forests)*, [2004 SCC 73](#);

¹¹ NIRB, [Project Certificate No 005](#), December 28, 2012 [Project Certificate 2012].

¹² NPPAA, s [112](#).

¹³ NIRB, [Project Certificate No 005, Amendment 005](#), November 17, 2023 [Project Certificate amendment 5].

question of whether the railway and shipping routes ought to be situated in different locations than those currently planned. And, in the alternative, if the Steensby Project does proceed, our client requests that the Project Certificate be amended to require further T&Cs to substantially address our client's concerns and to fully mitigate any Steensby Project impacts on their rights and duties. As part of the NIRB's process regarding this reconsideration request, Arviq HTO also asks that the NIRB provide a further opportunity now to elaborate on its concerns about the Mary River Project. This must include a site visit to meet with Arviq HTO members who have significant concerns about the exercise of their rights and the impacts on the environment and community in which they live.

Arviq HTO is aware that the Minister of Crown-Indigenous Relations and Northern Affairs has directed the NIRB to complete a Cumulative Effects Assessment Framework ("CEAF"). We understand that the cumulative effects evaluation is intended, among other things, to inform a reconsideration of the T&Cs in the Project Certificate for the Mary River Project under s. 112 of the Act.¹⁴ Arviq HTO asks for a discussion with NIRB representatives as to whether and how the CEAF and cumulative effects assessment may overlap with, and/or inform, the reconsideration requested in this letter to ensure efficiency and to avoid unnecessary duplication. Arviq HTO also asks to be included and supported within the CEAF and assessment processes as an active participant.

The current status of the Mary River Project presents a timely opportunity to reconsider the entire Project with the least interruption possible. The overall Project was approved near the end of 2012. Although the Proponent has for some years been mining iron ore and transporting it over land and sea, it has not yet proceeded with the Steensby Project and no work has been done in relation to the Steensby Project components. Given these long delays since 2012 in moving the Steensby Project forward, it is apparent that it has been a low priority for Baffinland and that implementation of the Steensby Project is not urgently required or necessary for Baffinland's operations. Likewise, the CEAF already contemplates assessment and reconsideration of the Mary River Project. Consequently, there is no impediment to conducting a reconsideration of all T&Cs at this time.

The Act requires that all terms and conditions of any project certificate issued must be implemented into any related lease or license to the extent possible.¹⁵ In light of the reconsideration request set out in this letter, and the CEAF process that is currently under development, and as set out in its letter to the Crown of June 24, 2025, Arviq HTO says that no new permits and authorizations should be issued in relation to the Mary River Project until it has been consulted and accommodated as required by the *Constitution Act*, and until the requested reconsideration and the CEAF process have been completed in consultation with Arviq HTO and all those exercising rights that may be impacted by the Mary River Project.

¹⁴ NPPAA, s [112](#).

¹⁵ NPPAA, ss [136-137](#).

B. Statutory framework for a s 112 reconsideration request and why one should be granted in this case

Section 112 of the Act grants the NIRB the discretion to reconsider the T&Cs set out in a project certificate.

Via section 112(1), at the request of an interested person, such as Arviq HTO, or on its own initiative, the NIRB may reconsider a project certificate where:

- a) the T&Cs 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 are significantly different from those anticipated at the time the certificate was issued; or
- c) technological developments or new information provides a more efficient method of achieving the intended purpose of the T&Cs.¹⁶

Further, under s. 112(2) of the Act, the NIRB must reconsider a project's terms and conditions if the responsible Minister(s) determine(s) that one of the three s 112(1) conditions are met, as summarized above.¹⁷ In this case, the responsible Ministers are the Ministers of Northern Affairs, Environment and Climate Change, Natural Resources, and Transport (the "responsible Ministers").¹⁸

Arviq HTO submits that:

1. The conditions set out in ss. 112(1)(a) and (b) of the Act are met in respect of the Mary River Project certificate, particularly with respect to the Steensby Project;
2. Arviq HTO exercises s. 35 rights and is an "interested person" under the Act, and therefore has standing to request a reconsideration under s. 112(1) of the Act;
3. In the circumstances, and based on the requests and evidence set out in this letter, the NIRB must reconsider the T&Cs under s. 112(1) of the Act;
4. Alternatively, the responsible Minister must find that the requirements of s. 112(2) of the Act are met and therefore, the Board must reconsider the T&Cs of the certificate under s. 112(2) of the Act.

For the reasons set out in this letter, Arviq HTO asks the Board to find that the Steensby Project not be allowed to go ahead and to reconsider the larger Mary River Project's T&Cs as a whole.

¹⁶ NPPAA, s [112\(1\)](#).

¹⁷ NPPAA, s [112\(2\)](#).

¹⁸ The Honourable Dan Vandal, P.C., M.P., Minister of Northern Affairs, [Letter to Kaviq Kaluraq, Chairperson, Nunavut Impact Review Board](#), November 16, 2022 at 2, located on the [Nunavut Impact Review Board](#)'s website [2022 Phase 2 Ministerial Decision].

The following sections elaborate on our client’s reasoning for reaching these conclusions and ground them in the Act’s framework for a reconsideration request.

C. The conditions set out in ss. 112(1)(a) and (b) are met.

1. The T&Cs set out in the Project Certificate are failing to guarantee the outcomes intended or are having unanticipated outcomes (s. 112(1)(a)).

All T&Cs in the Project Certificate must be reconsidered. Below, we highlight three ways in which the existing T&Cs are failing to accomplish their intended purpose or are having unanticipated outcomes. This is not intended to be an exhaustive list. Arviq HTO’s choice to highlight them should not be interpreted as a suggestion that reconsideration or amendment of only these specific T&Cs would be sufficient to address its concerns about the Mary River Project. The Project has had unanticipated effects, and effects that were greater than anticipated, demonstrating that the current T&Cs are insufficient.

1.1. Terms and Conditions relating to community consultation are failing to ensure this is accomplished by imposing an obligation of means rather than results for consultation.

T&Cs requiring Baffinland to be responsive to local community knowledge are failing to achieve their intended purpose, as Baffinland has repeatedly failed to show openness and humility towards Inuit Qaujimaningit and Inuit Qaujimajatuqangit.¹⁹ The original T&Cs aimed to promote engagement with Inuit communities in creating monitoring systems in some places. For example, Term and Condition No. 4 (“T&C 4”)’s objective was: “To promote public awareness and engagement of affected groups” and required Baffinland to “endeavour to include the participation of Inuit from affected communities and other communities in Nunavut when undertaking climate-change related studies and research.” This is to be completed during all Project Phases.²⁰ T&Cs 125, 125(a), 126, 127, and 128 also require community consultation.²¹

However, such T&Cs have failed to fulfill their objective. For example, T&C 4 imposes almost no positive duty on Baffinland as it requires merely that it “endeavour to include” Inuit participation. However, instead of showing openness and humility to Inuit Qaujimaningit and Inuit Qaujimajatuqangit, in 2022 this Board found that Baffinland has repeatedly failed to consider Inuit knowledge and experience and has failed to understand their concerns regarding Project effects.²² Baffinland must be held to a higher standard, and should be expected to engage with all potentially affected groups, including Arviq HTO, and take action in response to any concerns. Baffinland’s dismissal of Inuit groups who report experiencing changes to harvesting practices as a result of the Project is especially concerning, as this is precisely the kind of

¹⁹ NIRB, ["Inuit Qaujimajatuqangit"](#), accessed December 5, 2025.

²⁰ [Project Certificate amendment 5](#) at 17-18 (T&C 4).

²¹ [Project Certificate amendment 5](#) at 70-72 (T&Cs 125-128).

²² NIRB, ["Reconsideration Report and Recommendations for Baffinland’s Phase 2 Development Proposal"](#), File No 08MN053, May 2022 at 10-12 (ix-xi) [NIRB, Phase 2 Report].

information to which an effective adaptive management system must be highly responsive.²³ Baffinland’s failure to adequately respond to this information shows not just that these T&Cs are failing to achieve their intended effects, but also that Baffinland is not taking appropriate steps to determine Project effects and to avoid unacceptable ecosystemic and socioeconomic impacts from its operations.

Further, Baffinland has not engaged with our client Arviq HTO at any point. There have been changes in the policy framework governing the Project since the 2018 reconsideration decision, that allow for greater input from affected communities.²⁴ However, in 2022 the Board again noted Baffinland’s ongoing failure to listen effectively to local communities who were attempting to share their knowledge and observations of Project effects.²⁵ Arviq HTO wrote to the Canadian Transportation Agency on April 16, 2025, expressing concerns about the Steensby Project. Baffinland responded by highlighting previous engagements with other groups on the same topics,²⁶ but did not contact Arviq HTO or engage with our client. This causes Arviq HTO significant concern that Baffinland is not open to hearing from all affected groups, especially harvesters. As a result Baffinland and Canada do not understand the unique nature of our client’s situation, its rights, traditional laws of stewardship or its collective traditional knowledge from experiences out on the land and water. Arviq HTO submits that it shows a failure to follow the guiding Inuit Qaujimagatuqangit Principles of ᐃᓐᓴᓐ ᓄᓄᓐ - *Tunnganarniq*, or fostering good spirit by being open, welcoming and inclusive, and of ᐃᓐᓴᓐ ᓄᓄᓐ - *Aajiiqatigiinniq*, or decision-making through discussion and consensus.

Ultimately, given the concerns expressed by the NIRB, and the exclusion of harvesters as represented by Arviq HTO from any discussions, the T&Cs have failed to ensure proper engagement with community groups. In addition to the many other concerns outlined above, this is a serious flaw in the existing T&Cs that merits a reconsideration by the Board.

1.2. Terms and Conditions requiring Baffinland to establish baseline measures to support monitoring and adaptive management have not achieved their intended purpose due to Baffinland’s long delay in beginning the Steensby Project and the lack of firm deadlines in these conditions.

The T&Cs requiring the establishment of baseline measurements have failed to achieve their intended purpose. First, in many cases Baffinland has not yet taken these measurements. Second, the T&Cs fail to require Baffinland to take the baseline measurements within specific time windows before the commencement of construction for the Steensby Project. Second, to the extent the T&Cs did contain time requirements, these have in many cases become ineffective due to the unanticipated 13-year delay in commencing the Steensby Project. Third, these baselines

²³ NIRB, [Phase 2 Report](#) at 10-11 (pp ix-x).

²⁴ [2022 Phase 2 Ministerial Decision](#).

²⁵ NIRB, [Phase 2 Report](#) at 10-11 (pp ix-x).

²⁶ Baffinland, “[Response to Public Comments – Application for Approval to Construct a Railway to the Canadian Transportation Agency](#)” Mary River Project, May 6, 2025, CTA File No 24-44554 at 3 (p 2).

are to serve as the foundation for effective adaptive management,²⁷ and if they are not taken close to the time of starting construction, they will not provide the type of early warning they were designed to deliver. Fourth, these T&Cs contain a critical omission that reflects the failure to engage and consult with the community and the harvesters that are the members of Arviq HTO. As stated by the Board in the General Principles of Interpretation Applicable to T&Cs in the original Project Certificate:

“for those items where a more stringent version of the precautionary principle has been applied, it is the Board’s expectation that the adaptive management strategies chosen will be highly responsive to early warning signs that risks may materialize, and that rather than waiting for impacts to be noted before mitigation measures are triggered, thresholds and triggers will be set to require responses long before adverse impacts are likely.”²⁸

T&Cs that require baseline measurements in relation to the Steensby Project include, among others, the following three.

The stated objective of T&C 99 is: “[t]o supplement baseline information and improve predictions for potential impacts to marine wildlife”. T&C 99 requires the Proponent to:

...consider and identify priorities for conducting the following supplemental baseline assessments:

- a. Establish shipping season, inter-annual baseline in Steensby Inlet that enables effective monitoring of physical and chemical effects of ballast water releases, sewage outfall, and bottom scour by ship props, particularly downslope and downstream from the docks...
- b(i). The collection of additional baseline data in Steensby Inlet on walrus, beluga, bearded seal and anadromous Arctic Char abundance, distribution ecology and habitat use.

T&C 99 is to be completed during the Project Phases of Construction and Operations.²⁹

The aim of T&C 107 in the Project Certificate is “[t]o determine the presence of, and ensure that interactions with marine mammals, seabirds, and seaducks are effectively monitored for, along the northern and southern shipping routes, as applicable.” T&C 107 requires the Proponent to revise its proposal for monitoring marine mammal responses to shipping and suggests use of a baseline study “early in the shipping operations” to ensure that any potential changes in marine mammal, seabird, or seaduck populations, distributions, and behavior can be detected by

²⁷ See definition in NIRB, “[Final Hearing Report for Baffinland Iron Mine Corp.’s Mary River Project Proposal](#)”, File No 08MN053, September 14, 2012 at 33 (p 12) [NIRB, 2012 Final Report].

²⁸ [Project Certificate 2012](#) at 5 (s 3.2(f)).

²⁹ [Project Certificate amendment 5](#) at 58 (T&C 99).

subsequent monitoring. This is to be completed during the Project Phases of Construction and Operations.³⁰

T&C 54 aims “[t]o Update the Terrestrial Environmental Management and Monitoring Plan”. It requires, among other things, that the Proponent update its Terrestrial Environmental Management and Monitoring Plan to include, “b. Monitoring for caribou presence and behavior during railway and Tote Road construction.” It says it is to be completed during the Project Phase “Construction – within six (6) months of issuance of Project Certificate”.³¹

These T&Cs were all initially issued near the end of 2012. It is now almost thirteen years later, and although the Proponent has for some years been mining iron ore and transporting it over land and sea, it has not yet proceeded with the Steensby Project.

As stated above, these T&Cs, among others, have failed to achieve their intended purpose for four reasons that relate to this delay and the failure to engage with Arviq HTO.

First, key baseline data contemplated by T&Cs 54, 99 and 107, and others, relating to the Steensby Project has not been obtained. While Baffinland has taken some baseline measurements, such as landfast ice measurements in 2023,³² for the Steensby Project, others remain outstanding. For example, the NIRB noted in its 2025 Annual Monitoring Report that:

“Baseline [caribou] monitoring for the southern transportation route (Steensby corridor) remains unresolved. Community input has limited options like collaring, and camera traps are not considered sufficient to meet monitoring objectives. This creates uncertainty in understanding potential Project-induced impacts. The NIRB encourages TEWG members to continue working together to resolve this and identify an approach acceptable to all parties.”³³

Several categories of marine baseline data in the Steensby Inlet have not yet been collected.³⁴

Although the Steensby Project has not yet commenced, this outstanding baseline data is concerning, as Baffinland is seeking permits to start the Steensby Project. This is particularly true given the interconnectedness of the terrestrial and marine ecosystems at risk, as discussed below in section 2.1. This interconnectedness suggests that the Mary River Project may have had impacts on wildlife in the Steensby Inlet and along the proposed railway route over the past 12 years that have not been accounted for, and that Baffinland’s baselines for its operations will not capture the original state of these ecosystems. Further, the NIRB has noted that Baffinland is not in compliance with some of these related T&Cs in Milne Port, which does not bode well for

³⁰ [Project Certificate 2012](#) at 63 (T&C 107).

³¹ [Project Certificate 2012](#) at 38 (T&C 54).

³² NIRB, [2025 Annual Monitoring Report](#), November 26, 2025 at 45 (p 40), 52 (p 47) [NIRB, 2025 Monitoring Report].

³³ NIRB, [2025 Monitoring Report](#) at 36 (p 31).

³⁴ NIRB, [2025 Monitoring Report](#) at 48 (p 43), 57 (52).

Steensby Inlet's marine ecosystems.³⁵ For some of these, Baffinland was previously in compliance but is no longer.

Second, the Project T&Cs do not impose requirements on Baffinland to gather its baselines within clearly defined and relevant time periods. Further, the timelines for baseline measurements were established with reference to the originally approved projected Construction and Operation phases, but the actual sequence followed has differed fundamentally from the original plan, throwing the efficacy of the plan for baselines into doubt. Though the Construction and Operations phase as originally formally described has passed, this phase has in reality not commenced for the Steensby Project. Originally, Baffinland defined the Construction phase of the Project in the executive summary of its initial March 2008 Project Proposal, slating it to last four years from 2010 to 2014. It had initially noted that railway construction would be the key element of the construction phase, though it also included activities to construct the port from Steensby, and to construct the mine from Milne Inlet, and sites alongside Mary River and the whole length of the intended railroad.³⁶ The Operations phase was initially defined to include mining and transporting iron ore over land and sea.³⁷ Instead, Baffinland has constructed its mine and mined, transported, and shipped ore through Milne Port over the past 13 years, at greater volumes than initially contemplated, while the Steensby Project has not commenced.

The Project Phase cited for T&C 54 is particularly illustrative of how the Proponent's long delay in commencing this aspect of the Mary River Project has created logical inconsistencies in the T&Cs that require review. As set out above, T&C 54 required both that baseline measurements for caribou be taken during the Construction phase, when the railway was being built, and that they be taken within six (6) months of the issuance of the original Project Certificate. The latter deadline passed in 2013, more than 12 years ago, even though the railway has not yet been built. Although T&C 54 is expressly tied to railway construction, the long delays have rendered the clear timeline meaningless, as construction of the railway did not in fact occur within six (6) months (or even 13 years) from the issuance of the Project Certificate. Similarly, for other T&Cs required to be completed during the Construction and Operations phases, the delay has meant these were not completed in the years originally contemplated.

The NIRB's effort and flexibility in attempting to regulate this Project's environmental impacts despite Baffinland's repeated variations from the original Project Certificate are commendable. Nonetheless, the T&Cs did not contemplate the 13-year delay between construction and operation of the mine and northern transportation route on the one hand, and the construction of the Steensby Project on the other. Of the three T&Cs discussed above, only T&C 99 has been amended in the years since the Project Certificate was originally issued. It was revised following review of Baffinland's 2022 Sustaining Operations Proposal, which set out Baffinland's plans for operations for 2023 and beyond. The revisions are reflected in the T&C as set out above and

³⁵ NIRB, [2025 Monitoring Report](#) at 58 (53), 57 (52).

³⁶ Knight Piésold Consulting, "[Baffinland Iron Mines Corporation - Development Proposal for the Mary River Project](#)" (March 2008) at 3 (p ii) [2008 Development Proposal].

³⁷ [2008 Development Proposal](#) at 3-4 (pp ii-iii).

did not establish a clear timeline for Baffinland to take baselines. T&C 99 was deemed out of compliance in 2023-2024 in the NIRB report for that year.

Third, as a result of the issues discussed above, the T&Cs have not achieved their intended outcomes to obtain relevant and reliable baselines. The NIRB has repeatedly emphasized the importance of the precautionary principle and adaptive management as the foundation of the Mary River Project T&Cs.³⁸ As adaptive management relies entirely on effective monitoring to capture unanticipated effects as soon as possible, timely baseline measurements are critical to ensure that changes suggesting impacts can be identified, assessed and addressed as soon as possible. As this Board itself has often emphasized, ensuring accurate baseline measurements is critical to mitigating effects on ecosystemic integrity from Baffinland's activities.³⁹ The express objectives of the T&Cs highlighted show this as well. Further, the Board has identified "effects on marine wildlife (mammals and fish) and the marine ecosystem in general" and "effects on terrestrial wildlife (caribou) in particular" as of particular concern, and as requiring the strictest application of the precautionary principle, underscoring further the critical need for effective baselines for all potentially affected populations.⁴⁰

This Board has found in 2018 and 2022 that significant data gaps remain in the development of Project baselines and that this creates risks that the adaptive management framework set up by many of the T&Cs will not be able to mitigate ecosystemic risk as effectively as intended.⁴¹ In 2025, as noted above, Baffinland remains out of compliance with some baseline measurement requirements, and has fallen out of compliance on others.

³⁸ See e.g. [Project Certificate 2012](#) at 5 (s 3.2(f)), 26 (T&C 53), 47-48 (T&Cs 111-112), 51 (T&C 123), 69 (T&C 175); NIRB, [2012 Final Report](#) at 12-13 (pp xi-xii) (Executive Summary; from "During the Board's review of the Project, a central theme emerged..."), 32-34 (pp 11-13, s 1.6.2), 136 (pp 115, discussing T&Cs related to caribou), 146 (p 125, "...the Board has applied the precautionary principles and has focused its recommendations on measures that prevent potential effects, monitor and adaptively manage effects"), 253 (p 232, s 6.5.2); NIRB, [Phase 2 Report](#) at 90-93 (pp 51-54, s 1.6.2).

³⁹ NIRB, [2012 Final Report](#) at 163 (p 142, speaking to importance of monitoring in general), 247 (p 226, s 6.3.2), 248 (p 227, s 6.4.1).

⁴⁰ NIRB, [Phase 2 Report](#) at 91 (p 52); [Project Certificate 2012](#) at 5 (s 3.2).

⁴¹ NIRB, [Phase 2 Report](#) at 91-92 (pp 52-53) ("...data gaps in the regional monitoring of baseline conditions continue to persist and make the development of thresholds and indicators triggering adaptive management actions challenging."); NIRB, "[Reconsideration Report and Recommendations, Production Increase Proposal – Baffinland Iron Mine Corporation](#)," NIRB File No 08MN053, August 31, 2018 at 43 (p 26, "Through the NIRB's ongoing monitoring of project related impacts for the approved Mary River Project, several significant gaps have not yet been addressed by Baffinland leading to uncertainty in understanding of how the project is currently affecting the environment."), 45 (p 28, "To date, the existing marine mammal monitoring undertaken as part of Baffinland's ongoing monitoring for the Mary River Project has not generated sufficient empirical results to address concerns and gaps in the assessment of shipping impacts, and there is concern that a lack of information is making it difficult to compare effects predictions with an understanding of actual effects."), 47 (p 30, "However due to the information gaps resulting from limited available monitoring data from Baffinland on several valued ecosystemic components of specific concern to communities closest to the project, the Board is not satisfied that the increased impacts associated with increased hauling and shipping can be fully managed by current mitigation and monitoring plans for the site.") [NIRB, 2018 Reconsideration Report].

Fourth, with respect to T&C 99, there are no baseline data requirements respecting narwhal in Steensby Inlet, Foxe Basin and Hudson Strait, despite the potential and significant adverse impacts from port construction and shipping on narwhal populations of central importance to Arviq HTO. This omission is glaring, and may reflect the complete failure to engage with and obtain key information from members of Arviq HTO and from the community of Naujaat when conducting the initial and subsequent assessments leading to the Project Certificate.

1.3. Terms and Conditions relating to monitoring are vague and have not ensured that the Proponent effectively monitors Project impacts.

T&Cs that give the Proponent significant leeway to establish monitoring systems raise concerns that monitoring, and resulting mitigation, have not been done effectively, and that this problem will continue without this Board's intervention. An example is T&C 53, which aims "[t]o mitigate impacts to caribou from Project-related traffic". T&C 53 states:

The Proponent shall demonstrate consideration for the following:

- a. Steps taken to prevent caribou mortality and injury as a result of train and vehicular traffic, including operational measures meant to maximize the potential for safe traffic relative to operations on the railway, Milne Inlet tote road and associated access roads.
- b. Monitoring and mitigation measures at points where the railway, roads, trails and flight paths pass through caribou calving areas, particularly during caribou calving times.
- c. Evaluation of the effectiveness of proposed caribou crossings over the railway, Milne Inlet tote road and access roads as well as the appropriate number.
- d. Development of a surveillance system along the railway corridor to identify the presence of caribou in proximity to the train tracks and operational protocols for the train to avoid collisions and enable caribou to cross the train tracks unimpeded.
- e. Protocols for documentation and reporting of all caribou collisions and mortalities, as well as mechanisms for adaptive management responses designed to prevent further such interactions.⁴²

As currently drafted, the language of T&C 53 only requires the Proponent to "demonstrate consideration" regarding caribou mortality and other potentially significant impacts on caribou. It requires almost nothing of the Proponent, other than consideration regarding development of best practices, monitoring systems, and mitigation measures to fulfill this T&C. Despite this low bar, the most recent NIRB annual report treated "d. evaluation of effectiveness of caribou crossings" as being in progress but there was no finding of compliance with T&C 53d as further

⁴² [Project Certificate amendment 5](#) at 37-38 (T&C 53).

discussions are being held within the Terrestrial Effects Working Group.⁴³ Thus, T&C 53 is insufficient to meet its objective.

Further, despite the requirements of T&Cs 106, 107, 108 and 123, shipboard observers were not in place to monitor marine mammal, seabird and seaduck sightings. Baffinland was likewise out of compliance with T&Cs 110, 111 and 112, which require measures regarding monitoring and negative impact thresholds due to effects of vessel noise on marine mammals. These deficiencies were noted in the most recent Annual Monitoring Report.⁴⁴ The objectives of these T&Cs are clearly not being met.

Both the NIRB and the Minister of Intergovernmental and Northern Affairs and Internal Trade have raised concerns that Baffinland has not consistently complied with T&Cs to date, especially regarding establishing effective monitoring schemes.⁴⁵

In the September 30, 2018 approval of a Production Increase Project proposed by Baffinland, the responsible Minister imposed new T&Cs requiring Baffinland to work with third parties – namely the NIRB, an unspecified third party, and the Marine Environment Working Group – to monitor its compliance with the Project’s original T&Cs to address these problems.⁴⁶ However, in 2022, the NIRB once again noted concerns about Baffinland’s failure to establish effective monitoring schemes. This Board stated:

“the Board is mindful that general commitments to the development of future adaptive management measures is not a substitute for providing sufficient information to effectively assess the potential for effects resulting from the Proposal and providing the detail necessary to determine whether the Proponent’s proposed mitigation measures will be sufficient to prevent or reduce the significance of project-related effects.”⁴⁷

At that time, the NIRB and the responsible Ministers were considering Baffinland’s Phase II Development Proposal. Phase II proposed the construction of a northern railway and was initially submitted in 2014 as a proposed amendment to the Mary River Project, Certificate No. 005.⁴⁸ The NIRB recommended that this proposal not be approved, and the responsible Ministers agreed, after they determined that Phase II would have unacceptable impacts, and that these could not be mitigated by the addition of new T&Cs.⁴⁹

⁴³ NIRB, [2025 Monitoring Report](#) at 37 (p 32).

⁴⁴ NIRB, [2025 Monitoring Report](#) at 56-59, 63 (pp 51-54, 58)

⁴⁵ The Honourable Dominic LeBlanc, P.C., Q.C., M.P., The Minister of Intergovernmental and Northern Affairs and Internal Trade, [Letter to Ms. Elizabeth Copland](#), Chairperson, Nunavut Impact Review Board, September 30, 2018 [2018 Production Increase Proposal Ministerial Approval].

⁴⁶ [2018 Production Increase Proposal Ministerial Approval](#).

⁴⁷ NIRB, [Phase 2 Report](#) at 92-93 (pp 53-54).

⁴⁸ NIRB, [Phase 2 Report](#) at 4-5 (pp iii-iv).

⁴⁹ [2022 Phase 2 Ministerial Decision](#).

Our client is concerned that Baffinland will not effectively monitor, manage and mitigate impacts to avoid unacceptable effects when constructing and operating the Steensby Project. As the Board has stated, the adaptive management strategies developed through the T&Cs and by Baffinland should be:

“highly responsive to early warning signs that risks may materialize, and that rather than waiting for impacts to be noted before mitigation measures are triggered, thresholds and triggers will be set to require responses long before adverse impacts are likely”.⁵⁰

Given existing data gaps, these adaptive management strategies were chosen as the recognized best practice in natural resource management to operate in an environment where the Board had identified, in the original 2012 Project approval, a high degree of uncertainty regarding the Project’s anticipated effects.⁵¹ In 2022, ten years later, the Board noted that significant uncertainties still remained. These related to baseline conditions, whether predicted effects in the original assessment accurately reflect current effects, and whether Baffinland’s current and proposed mitigation and monitoring measures are and will be effective to prevent significant adverse effects from the Phase 2 proposal alone or in combination with Baffinland’s current and future operations.⁵²

Ultimately, for its strategies to be effective, Baffinland must exercise a high degree of care and good faith towards the ecosystems and communities facing potential effects from the Project in developing, operating, and responding to the findings of these monitoring systems. Baffinland’s failures to effectively implement monitoring systems over more than a decade since the Project was initially approved demonstrate that the T&Cs as initially designed are not capable of effectively protecting the affected communities and ecosystems, including Arviq HTO. The amendments that have been made to the Project Certificates over the years are insufficient to address this concern. Clear compliance deadlines, and strict consequences for noncompliance are necessary to ensure effective protections.

2. There have been multiple significant changes in circumstances since the Baffinland certificate was issued (s. 112(1)(b)).

Arviq HTO submits that a reconsideration is further justified under s. 112(1)(b) as the circumstances of the Project are significantly different than those anticipated when the initial approval was issued over 13 years ago.

⁵⁰ [Project Certificate 2012](#) at 5 (s 3.2(f)).

⁵¹ See e.g., [Project Certificate 2012](#) at 5 (s 3.2(f)), 26 (T&C 53), 47-48 (T&Cs 111-112), 51 (T&C 123), 69 (T&C 175); [NIRB, 2012 Final Report](#) at 12-13 (pp xi-xii, from “During the Board’s review of the Project, a central theme emerged...), 32-34 (pp 11-13, s 1.6.2), 136 (p 115, discussing T&Cs related to caribou), 146 (p 125, “the Board has applied the precautionary principles and has focused its recommendations on measures that prevent potential effects, monitor and adaptively manage effects”), 253 (p 232, 6.5.2, “Conclusions and Recommendations”).

⁵² NIRB, [Phase 2 Report](#) at 91-92 (pp 52-53).

2.1. The Crown’s failure to engage appropriately with our client and other Inuit communities, and Baffinland’s failure to account for Inuit Qaujimaningit and Inuit Qaujimajatuqangit and other local knowledge and community knowledge, demonstrate changed circumstances warranting reconsideration.

The NIRB approved the Mary River Project in 2012, including the Steensby Project, and the accompanying T&Cs, without Arviq HTO’s participation, and without the information our client would have provided. The NIRB is required to account for traditional and community knowledge when screening and reviewing projects,⁵³ and NIRB policy imposes a corresponding requirement on project proponents to integrate local knowledge and Inuit Qaujimaningit into their planning.⁵⁴ Therefore, at the time of approval, there was an expectation by the NIRB that Baffinland would take account of Inuit Qaujimaningit/Qaujimajatuqangit throughout the Project’s lifespan. Instead, as discussed at 1.3 above, even those communities who were contacted have found their opinions were not taken seriously or were dismissed.

Our client, meanwhile, was not invited to participate in any reviews of the Mary River Project. Further, as we advised the Crown in our letter of June 24, 2025, Arviq HTO has never been consulted, and the Crown’s duty to consult and accommodate our client remains unfulfilled. Arviq HTO is gravely concerned about the potential significant adverse impacts that the Steensby Project could have on its rights to harvest wildlife, including but not limited to: seals, narwhals, beluga whales, walrus, Hudson Bay caribou, the Lorillard caribou herd, barren ground caribou, bowhead whales, arctic char, arctic fox, musk oxen, and ptarmigan. Arviq HTO considers it vital that the Board hear its concerns given its responsibility to ensure the good management of these species, and to ensure that the members of its community are provided for, under the Inuit Qaujimajatuqangit Principles of ᐱᐱᓴᓴᓴᓴᓴᓴ - *Pijitsirniq*, or serving and providing for family and community, and of ᐱᐱᓴᓴᓴᓴᓴᓴᓴᓴᓴᓴ - *Avatittinnik Kamatsiarniq*, or respect and care for the land, animals and the environment.

With regard to caribou, for example, Arviq HTO’s community relies on harvesting mainland caribou for subsistence. However, when Baffin Island caribou herds became depleted in recent years, Inuit who would normally hunt caribou on Baffin Island travelled to the mainland to hunt from the same herds on which our client’s community relies. Our client is gravely concerned that the well-being of these mainland herds will be threatened due to these increased harvest pressures. While Arviq HTO understands that the Baffin Island caribou populations have recently increased, this recovery will be jeopardized if Baffinland is allowed to build its railway to Steensby Inlet. Any risk of negative impact on Baffin Island caribou herds at this time is unacceptable given the precarity of these populations, and the ensuing impact on mainland populations.

⁵³ NPPAA, s [103\(3\)](#).

⁵⁴ Nunavut Impact Review Board Technical Guide Series, “[Proponent’s Guide](#)” (February 2020) at 34-35.

Project are significantly different than anticipated when the Project Certificate was issued. Arviq HTO's participation is a necessary precondition for any decisions that may be made regarding the Steensby Project and the broader Mary River Project.

2.2. New western scientific studies and local community knowledge indicate that the Mary River Project's effects are greater than originally anticipated.

When the Mary River Project was initially approved in 2012, the NIRB imposed T&Cs to attempt to mitigate impacts on marine wildlife such as narwhal and walrus.⁵⁵ However, since the approval in 2012, and over the long delay in implementing the Steensby Project, Western science's understanding of the ecosystems affected by the Mary River Project as a whole, and potentially affected by the Steensby Project, has evolved and deepened. Local community knowledge about the Mary River Project's effects and Steensby Project's potential effects has also developed. Meanwhile, those original T&Cs have not been updated based on new science.⁵⁶ For example, while it was known when the Project was approved that vessel traffic can be a major stressor for marine mammals, narwhal behavioural response to vessel traffic was less well-understood by Western science.⁵⁷ Recent research, in part based on the effects of the Mary River Project as implemented thus far, indicates that the effects of the Project are more significant on the environment and mammalian species than was thought more than a decade ago. We provide several examples of advancements in understanding of the Project's impacts in this letter, but it is not possible to include a comprehensive list of all additional studies that should be considered and which establish the second factor⁵⁸ warranting a reconsideration of the Project.

A 2025 study by the Arctic Council highlights that Arctic waters are unique when it comes to underwater sound, and that in this environment, even a small increase in the number of vessels can have a large impact.⁵⁹ The report contains detailed modelling of potential increases in shipping noise as the sea ice thins, which will lead to increased traffic in the region in the absence of appropriate conditions, new policy or legislation.⁶⁰ These projections show an Arctic-wide average of a 5dB increase in underwater noise levels between 2019 and 2030, with many areas, including areas in Baffin Bay and Hudson Bay, projected to have an even greater increase.⁶¹ A 5dB increase in sound, on average across the Arctic, equates to "[a]n almost quadrupling of sound pressure in the panarctic acoustic environment by 2030...".⁶² The same study reports that the mitigation measure of reducing the speed of the Mary River iron ore

⁵⁵ See e.g. [Project Certificate 2012](#) at 47-48 (T&C 111-12), 70-71 (T&C 178-79).

⁵⁶ Of the four T&C's highlighted at footnote 53, only T&C 179 has been varied through temporary adjustments to the levels of shipping and transit of iron ore allowed, and this was to accommodate Baffinland's Production Increase Proposal, not reflect new science: [Project Certificate amendment 5](#) at 91-93 (T&C 179(a)-(c)).

⁵⁷ Courtney Watt et al, "[Cortisol levels in narwhal \(Monodon monoceros\) blubber from 2000 to 2019](#)" (2021) 7:3 *Arctic Science* 690 at 691, 695 [Watt et al].

⁵⁸ NPPAA, s [112\(1\)\(c\)](#).

⁵⁹ Arctic Council, "[Protection of the Marine Environment: Underwater Noise in the Arctic Understanding impacts and defining management solutions](#)" (May 2025) at 4 (p 2) [Underwater Noise].

⁶⁰ [Underwater Noise](#) at 5 (p 3).

⁶¹ [Underwater Noise](#) at 14 (p 12).

⁶² [Underwater Noise](#) at 14 (p 12).

carriers sailing between Baffin Bay and Milne Port resulted in no more than a 0.5 dB decrease in underwater noise along the route in 2019.⁶³

Research commissioned by Oceans North has found that Baffinland's shipping has been disturbing narwhals in the Eclipse Sound, north of Baffin Island, since 2019 based on a study conducted from 2016-2021.⁶⁴ Narwhals are more sensitive to noise than some other species of whales, and many local community members have expressed concerns that ship noise is having a negative impact on narwhal.⁶⁵ Oceans North's study culminated in a peer-reviewed publication in July 2025 documenting observations that as ships approach, narwhal clicks would be present, then decrease or disappear as the ship drew nearer, then resume again once it had passed. This effect – of less narwhal sound activity closer to ships – was statistically significant in the months of July and October during the years studied, and these are the months when narwhals are most active. In about 15% of observed cases, the clicks stopped when the ship was as far away as 30 km, and there was a statistically significant effect at 20 km. This is significant because when a ship is greater than 10 km away, the noise the ship produces is in a frequency range that Western scientists had previously assumed narwhals could not hear.⁶⁶ This research, using a new method, confirms what Inuit harvesters and scientists had long noted – ie. that narwhal had higher noise sensitivity than thought to be the case by Western scientists.⁶⁷ To our knowledge this degree of noise sensitivity has not, to date, been considered by the Board in relation to the Mary River Project.

Another 2021 peer-reviewed study showed that narwhals experienced a significant increase in cortisol levels, a stress-related hormone, during times when there was Baffinland vessel traffic as opposed to both pre-Project baselines and a 2015 entrapment event (as an example of a stressful event).⁶⁸

Furthermore, the Mittimatalik Hunters and Trappers Organization noted in comments submitted within the NIRB's process and its 2022 report, that members of its community had already observed Project-related disruption and displacement of narwhal and seal distribution and abundance in the Pond Inlet area.⁶⁹

There are also many ongoing studies that should be used to inform the Steensby Project's impacts along the proposed marine shipping route. One such study aims to examine the impacts

⁶³ [Underwater Noise](#) at 27 (p 25).

⁶⁴ Ruth Teichroab, "[How Does Ship Traffic Affect Narwhal in Nunavut's Eclipse Sound?](#)" (April 1, 2019), Oceans North blog. Ruth Teichroab, "[Monitoring the Impact of Increased Shipping on Narwhal in Eclipse Sound](#)" (January 25, 2021), Oceans North blog.

⁶⁵ Jack Ewing et al, "[Narwhal acoustic presence in Eclipse Sound, Nunavut: relationships with sea ice and responses to ships](#)" (2025) 15 Scientific Reports [Ewing et al].

⁶⁶ [Ewing et al.](#)

⁶⁷ [Ewing et al.](#)

⁶⁸ [Watt et al.](#)

⁶⁹ NIRB, [Phase 2 Report](#) at 157-158 (118-119).

of shipping noise on walrus in the Foxe Basin.⁷⁰ The shipping route passes through a known birthing area for walrus. Given walrus' sensitivity to underwater noise, and the importance of vocalization to mating for walrus, this is of concern to Arviq HTO.⁷¹

Arviq HTO submits that T&Cs 106, 107, 108, 110, 111, 112, 178 and 179 are among those seeking to mitigate impacts of the Mary River Project on marine mammals that must be revisited based on this new knowledge. Beginning with T&C 179, it requires that "Baffinland shall not exceed 20 ore carrier transits to Steensby Port per month during the open water season and 242 transits per year in total."⁷² It aims:

"To apply the precautionary principle in respect of potential effects on marine wildlife and marine habitat from changes to shipping frequency that may result from a significant increase in mine production for an extended period of time."⁷³

The NIRB noted in their 2012 Final Hearing Report that, given their finding that it was appropriate to apply a more stringent version of the precautionary principle to address the Mary River Project's potential impacts on marine mammals, it was appropriate to apply an "upper operating limit" to Baffinland's shipping "annually and during the open water season."⁷⁴ Despite the new scientific knowledge indicating that narwhal are more sensitive to noise than previously thought, the NIRB has not considered, but must now consider, whether these limits should be decreased. Instead, the recent research discussed above was not accounted for, to Arviq HTO's knowledge, when temporary increases in shipping activity limits in T&Cs 179(a)-(c), were allowed and extended on Baffinland's request, in the first, second, third, fourth and fifth amendments to the Project Certificate.⁷⁵

T&Cs 111 and 112⁷⁶ require development of monitoring and mitigation measures for marine mammal impacts and should be updated to include an explicit requirement that these be developed based on the most up-to-date science. T&C 111 aims to "prevent impacts to marine mammals from Project shipping activities"⁷⁷ and requires the Proponent to:

⁷⁰ Emma Tranter, "[Researchers want to know how more marine shipping in Nunavut could affect walrus](#)," (January 16, 2025) CBC News [Tranter, "Marine shipping in Nunavut"].

⁷¹ Tranter, "[Marine shipping in Nunavut](#)".

⁷² [Project Certificate amendment 5](#) at 91-92 (T&C 179).

⁷³ [Project Certificate amendment 5](#) at 91-92 (T&C 179).

⁷⁴ [NIRB, 2012 Final Report](#) at 253 (p 232, s 6.5.2).

⁷⁵ The NIRB initially set T&Cs 179(a)-(b) in the first amendment to the Project Certificate, in response to Baffinland's Early Revenue Phase Proposal, to try to limit their shipping activity: NIRB, [Project Certificate No 005, Amendment 001](#), May 28, 2014 at 79 [Project Certificate amendment 1]; NIRB, "[Public Hearing Report – Mary River Project: Early Revenue Phase Proposal](#)" File No 08MN053, March 2014 at 184 (p 162) [NIRB, 2014 Final Report]. This was extended in subsequent decisions: see NIRB, [Project Certificate No 005, amendment 002](#), October 30, 2018 at 81-82 [Project Certificate amendment 2] and summary in [Project Certificate amendment 5](#) at 2 ("Schedule of Amendments to the Nunavut Impact Review Board's Mary River Project Certificate [No 005]").

⁷⁶ [Project Certificate amendment 5](#) at 65-66 (T&Cs 111-112).

⁷⁷ [Project Certificate amendment 5](#) at 65 (T&C 111).

...develop clear thresholds for determining if negative impacts as a result of vessel noise are occurring. Mitigation and adaptive management practices shall be developed to restrict negative impacts as a result of vessel noise. This shall include, but not be limited to: a. Identifications of zones where cumulative noise could be mitigated due to biophysical features (e.g. water depth, distance from migration routes, distance from overwintering areas etc.); and b. Vessel transit planning, for all seasons, to determine the degree to which cumulative sound impacts can be mitigated through the seasonal use of different zones.⁷⁸

T&C 112 aims to “prevent impacts to marine mammals from Project shipping activities”⁷⁹ and states:

Prior to commercial shipping of iron ore, the Proponent, in conjunction with the Marine Environment Working Group, shall develop a monitoring protocol that includes, but is not limited to, acoustical monitoring that provides an assessment of the negative effects (short and long term cumulative) of vessel noise on marine mammals. Monitoring protocols will need to carefully consider the early warning indicator(s) that will be best examined to ensure rapid identification of negative impacts. Thresholds shall be developed to determine if negative impacts as a result of vessel noise are occurring. Mitigation and adaptive management practices shall be developed to restrict negative impacts as a result of vessel noise. This shall include, but not be limited to:

- a. Identification of zones where noise could be mitigated due to biophysical features (e.g., water depth, distance from migration routes, distance from overwintering areas etc.);
- b. Vessel transit planning, for all seasons.
- c. A monitoring and mitigation plan is to be developed, and approved by Fisheries and Oceans Canada prior to the commencement of blasting in marine areas.⁸⁰

Baffinland must rely on recent science to implement these T&Cs effectively. By relying on old science, they might only monitor for impacts on narwhal within 10 km of shipping routes, when there is new science showing that walrus can experience impacts 20 to 30 km from a ship. Baffinland would also need to account for this finding to effectively identify zones where noise impacts could be mitigated, and plan vessel transit accordingly.

As a final example, walrus require very specific habitat conditions. As climatic changes and shipping impacts are affecting the availability of these conditions, it is important to account for new science to ensure minimal impacts to walrus and walrus habitat. Walrus need shallow water

⁷⁸ [Project Certificate amendment 5](#) at 65 (T&C 111).

⁷⁹ [Project Certificate amendment 5](#) at 65-66 (T&C 112).

⁸⁰ [Project Certificate amendment 5](#) at 65-66 (T&C 112).

with many bivalves for feeding that is found close to open ice or land on which they can rest.⁸¹ As ice breakup is occurring earlier in western Hudson Bay, including along the Steensby Project's shipping route, walrus habitat may be changing and shifting.⁸² This variability in walrus habitat is a changed condition that, to Arviq HTO's knowledge, has not yet been accounted for in the T&Cs. For example, the requirement in T&C 104 and 178 for Baffinland's vessels to pass to the south of Mill Island, where possible, assumes static habitat for walrus.⁸³ Other T&Cs that consider impacts on walrus primarily focus on monitoring their reactions to potential disturbance, and do not explicitly consider adapting shipping routes to avoid their changing habitats.⁸⁴

2.3. Increases in shipping and climatic changes have created a changed environment for the Project's operation that will alter its impacts, especially through a cumulative effects lens.

Conditions in the Arctic are now quite different than at the time the Mary River Project was initially approved. This is particularly relevant to the delay in commencing the Steensby Project. The Project's impacts would likely be understood significantly differently if it were to be assessed today than when the Project was initially approved thirteen years ago, particularly when viewed through a cumulative effects lens. This is true both of the Project's environmental and socioeconomic impacts.

Climate change has already had a serious effect on the Arctic environment. Average Arctic temperatures have increased faster than any other region on earth, at three times the global average.⁸⁵ These create natural pressures on native species from the decrease of sea ice, sea level rise and thawing permafrost, among others.⁸⁶ The Intergovernmental Panel on Climate Change ("IPCC"), in its 2023 report, found that the thaw of permafrost is causing impacts on terrestrial Arctic ecosystems that may soon become irreversible.⁸⁷ They also found that "increasing weather and extreme climate events" are increasing the number of people at risk of food insecurity globally, especially in Indigenous Arctic communities.⁸⁸ Researchers in Nunavut have reported increases in food insecurity due to climate change, as well.⁸⁹

⁸¹ Jeff W Higdon, D Bruce Stewart & Robert E A Stewart, "[Atlantic walrus \(*Odobenus rosmarus rosmarus*\) in northern Hudson Bay – status, research needs, and monitoring opportunities](#)" at 8 [Higdon et al].

⁸² Higdon et al at 20.

⁸³ [Project Certificate amendment 5](#) at 62 (T&C 104), 91 (T&C 178).

⁸⁴ [Project Certificate amendment 5](#) at 58-59 (T&C 99), 60-61 (T&C 101), 62 (T&C 104), 63-64 (T&Cs 107, 109), 90 (T&C 176).

⁸⁵ World Wildlife Fund, "[Climate Change](#)" (2025).

⁸⁶ World Wildlife Fund, "[Arctic Connected | Arctic Biodiversity Under Threat](#)" (December 12, 2022).

⁸⁷ Prediction made with high confidence. "Summary for Policymakers" in IPCC (Core Writing Team, H. Lee and J. Romero (eds.)), [Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change](#) (Geneva, Switzerland: IPCC, 2023) [2023 IPCC Synthesis Report] 17-50 (pp 1-34) at 21 (p 5, A.2.3).

⁸⁸ Finding made with high confidence. "Sections" in 2023 IPCC Synthesis Report 51-131 (pp 35-115) at 66 (p 50).

⁸⁹ Tharsha Ravichakaravarthy, "[Nunavut researchers say more should be done to understand how climate is changing access to country food](#)" (January 11, 2025) CBC News.

Further, these climactic changes, particularly the reduction of Arctic sea ice, have together with political and economic drivers led to a marked increase in shipping in the Arctic Polar Code area. The Arctic Council Working Group on the Protection of the Arctic Marine Environment (PAME) has identified a 37% increase in unique vessels entering the Arctic from 2013 to 2024, and a 108% increase in the distance sailed by ships in the Arctic. This is driven in part by Baffinland's activities, along with activities related to the Yamal Gas Project, and increased commercial shipping through the Arctic.⁹⁰

The many species of concern to our client, and the supporting ecosystems, are experiencing the effects of these changes alongside those caused more directly by the Baffinland Project, and the cumulative effects impacting Arviq HTO's members may look substantially different today than at the time the Project was approved.

As outlined above, circumstances have changed substantially in the almost thirteen years since the Steensby Project was approved, and warrant reconsideration of the Steensby Project. While we recognize that the Board has amended the Mary River Project Certificate five times since 2012, to our knowledge, it has not reconsidered the railway, port, and associated shipping since the original approval in 2012.

Further, Baffinland has waited thirteen years to move forward with the Steensby Project, despite mining iron ore at the mine site and sending it to market. This demonstrates that the Steensby Project is unnecessary for the functioning of the larger Mary River Project. We say this without conceding that the Mary River Project as it exists today is necessary or functioning harmoniously with the surrounding communities and ecosystems.

Additionally, ordering a reconsideration at this time is consistent with the spirit and intent of the Act. Section 147(1) states that "If a project is not commenced within five years after the day on which the project was approved under this Part, that project is subject to a new assessment under this Part." There is a clear intention under the Act that projects do not languish and must be implemented in a timely manner. The Steensby Project has gone unexecuted for more than twice the five years contemplated by s 147 wherein a new assessment would be required. A reconsideration is thus critical to ensure that the Project's impacts are accurately understood, and potential impacts of the Steensby Project are updated in light of changing conditions, ineffective T&Cs, and new scientific advances, and with the benefit of the participation of Arviq HTO.

2.4. The Mary River Project's failure to deliver promised socioeconomic benefits constitutes a changed circumstance.

The NIRB has noted in the past that Baffinland has consistently failed to meet Inuit employment targets and otherwise deliver on promised socioeconomic benefits.⁹¹ Many community members have expressed concerns that promised benefits from the Mary River Project are not being seen

⁹⁰ Arctic Council, "[Arctic Shipping Trends on the Rise: What Trends Can Tell Us](#)" (May 12, 2025).

⁹¹ NIRB, [Phase 2 Report](#) at 268-269 (pp 229-30).

in their communities.⁹² Additionally, the Board has acknowledged concern from community members that Baffinland’s modelling of socioeconomic effects may be unreliable.⁹³ Community members have also expressed concern that Baffinland is focused solely on monetary socioeconomic effects, such as job creation, without attending to the wide array of non-monetary socioeconomic impacts that are also of concern to community members.⁹⁴

Baffinland’s failure to deliver promised socioeconomic benefits over the life of the Mary River Project constitutes a changed circumstance that merits reconsideration. Likewise, there is no indication that any socioeconomic benefits have flowed, or will flow, to Arviq HTO from the Mary River Project. Yet Arviq HTO will experience adverse impacts should the Steensby Project move forward. Any negative impacts on wildlife populations, discussed above, will have a significant socioeconomic impact given that Arviq HTO’s members rely upon these wildlife populations to sustain themselves and their families.

2.5. If the southern railway and the northern road are used on an ongoing basis to transport ore from the mine site, this will further constitute new information and a circumstance unforeseen at the time the Project certificate was issued

It remains unclear whether, if Baffinland is allowed to construct and operate the Steensby Project, it will use both the northern road and Port Milne and the southern railway and Port Steensby to transport its product to sea-going vessels. If both routes are now to be used, there has never been an assessment of the potential impacts of actively operating both transportation systems at the same time. This potentially constitutes further new information and would be yet another significantly changed circumstance not contemplated at the time the Project certificate was issued.

D. Arviq HTO is an “interested person” under the Act, and therefore has standing to request a reconsideration under s. 112(1).

Arviq HTO is an “interested person” under s 112(1) of the Act and therefore has standing to request a reconsideration.⁹⁵ The phrase “interested person” is not defined under the Act.⁹⁶ However, as has been discussed above, Arviq HTO is concerned that the Project has impacted, and will impact, their rights and responsibilities, and therefore has an interest in how the Project is regulated. The Act provides that the views, values and well-being of communities and ecosystems in the “designated area” will be prioritized when assessing projects,⁹⁷ and that

⁹² NIRB, [Phase 2 Report](#) at 198 (p 159).

⁹³ NIRB, [Phase 2 Report](#) at 266 (p 227).

⁹⁴ NIRB, [Phase 2 Report](#) at 266-267 (pp 227-28).

⁹⁵ NPPAA, s [112\(1\)](#).

⁹⁶ NPPAA, s [2](#).

⁹⁷ NPPAA, s [23](#).

impacts outside the designated area, in the rest of Canada, must also be considered.⁹⁸ The “designated area” is defined to include the Nunavut Settlement Area and the Outer Land Fast Ice Zone.⁹⁹ Thus, the Act clearly takes a broad view of who may have an interest to assert in relation to a project in consideration under the Act. As a result, considering our client’s concerns in relation to the Project is consistent with the spirit and intent of the Act.

E. Under s. 112 of the Act, the Board must reconsider the Mary River Project Certificate.

Arviq HTO submits that the foregoing warrants a reconsideration by the Board under s 112(1) of the Act,¹⁰⁰ and hereby requests that the Board reconsider the Terms and Conditions of the Mary River Project Certificate.

Arviq HTO further submits that each subheading in section C of this letter outlines a unique set of facts based on which the responsible Minister must find that the conditions for issuing a reconsideration under ss. 112(1)(a) and (b) of the Act have been met, and that as a result, per s. 112(2) of the Act, the Minister must direct that the Board conduct the reconsideration.¹⁰¹

If a reconsideration is conducted under the Act, Arviq HTO’s right to consultation would apply to the reconsideration process as the reconsideration would affect its members’ constitutionally-protected harvesting rights.¹⁰² As a result, Arviq HTO and its members must be given financial and other support, and be provided with the opportunity to fully participate within the statutory reconsideration process and have their concerns fully considered and accommodated.

Notwithstanding the above, Arviq HTO does not concede that consultation and engagement during a reconsideration under s 112 of the Act would be sufficient to rectify the Crown’s serious omissions to date, to satisfy the honour of the Crown or to fulfil the Crown’s obligation to consult and accommodate Arviq HTO’s constitutionally protected rights in respect of the Mary River Project.

Lastly, Arviq HTO thanks the NIRB for providing updates to Arviq HTO regarding the CEAF process.

As well, Arviq HTO acknowledges receipt of the letter from the Northern Projects Management Office dated February 4, 2026. Arviq HTO is considering this letter and will be responding soon. Arviq HTO is very concerned about the Crown’s intentions to move forward with approvals, decisions and authorizations with respect to the Steensby Project, despite its ongoing failure to consult. Among other things, the Crown has failed to respond meaningfully to Arviq

⁹⁸ NPPAA, s 98, [103\(1\)\(b\)-\(c\)](#).

⁹⁹ NPPAA, s 2.

¹⁰⁰ NPPAA, s [112\(1\)](#).

¹⁰¹ NPPAA, s [112\(1\)-\(2\)](#).

¹⁰² Constitution Act, 1982, s 35; [Haida Nation v British Columbia \(Minister of Forests\)](#), 2004 SCC 73; NLCA, s [2.2.1](#), [5.1.2\(a\)-\(b\)](#).

HTO's correspondence, ignored their requests to be included and supported in processes already underway, and even ignored Arviq HTO's request for relevant information and documentation regarding the various decisions and authorizations under consideration. The Crown's failure to consult Arviq HTO, or even communicate with them, before proceeding with these decisions, approvals and authorizations is unacceptable and is a significant breach of the Crown's s. 35 duties.

Sincerely,



James Gunvaldsen Klaassen
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Counsel for Arviq Hunter and Trapper Organization

cc.

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