

January 23, 2023 ⊿∩ 23, 2023

Sharon Ehaloak Executive Director Nunavut Planning Commission (**NPC**) PO Box 1797 Iqaluit, NU XOA 0H0

Re: Completion of NPC Revision of Amendment No. 1 to the North Baffin Regional Land Use Plan Requested by Canada and Nunavut on April 28, 2014

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Dear Ms. Ehaloak: کے ۲^۰ ۵۲۹ ۲۰ ۲۰

Baffinland Iron Mines Corporation (**Baffinland**) is writing to respond to correspondence issued on January 16, 2023 by the Government of Canada (**Canada**), Nunavut Tunngavik Inc. (**NTI**)/ Qikiqtani Inuit Association (**QIA**), and the World Wildlife Fund (**WWF**) respecting the completion of Amendment No. 1 to the North Baffin Regional Land Use Plan (**NBRLUP**). This response also considers the Government of Nunavut's (**Nunavut**) last submission on the subject of Amendment No. 1 from May 10, 2019.

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- The NPC has already considered the potential for cumulative effects in its decision-making processes on Amendment No. 1 and Amendment No. 2, in accordance with the NBRLUP.
- - A Cumulative Effects Assessment (CEA) was submitted to NPC with the 2012 Final Environment Impact Statement (FEIS) during the coordinated review of the Mary River Project (the Project) by the Nunavut Impact Review Board (NIRB) and NPC. In recommending approval of the Amendment No. 1 Southern transportation corridor, the NPC considered the use of the Milne Inlet Tote Road and Milne Port as an additional transportation route to deliver ore to market from Deposits 1-9 (considered under the category of potentially induced development).
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 - This CEA was updated in the 2013 FEIS Addendum for the Early Revenue Phase (ERP) amendment and was provided to NPC as part of the NBRLUP application materials. Based on these materials, the NPC considered the cumulative effects of the intensified use of the Northern transportation corridor added to the approved project (which included the Steensby railway). Taking all this information into account, the NPC recommended approval of Amendment No. 2.
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- Cumulative effects of the Project have also been assessed by the NIRB and no new information is available which would warrant or form the basis for an updated CEA. In fact, there are fewer current and foreseeable activities now than were considered in 2012. The only significant pending application was for Phase 2, and that project proposal was rejected by the Minister on November 16, 2022.
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- The Mary River Mine (including the Tote Road and Milne Port, Northern shipping, and the Steensby Railway and Port) is approved. There have been no changes to the NBRLUP Amendment No. 1 or Amendment No. 2 routes, nor any changes to the infrastructure that exists or will be constructed within the Amendment No. 1 and No. 2 transportation corridors.
- The NPC and NIRB already carried out extensive public consultation on the Steensby infrastructure components of the Mary River Mine, and this information was taken into consideration by parties and the NPC when it made recommended Amendment No. 1 and Amendment No. 2. The NPC has provided a further public opportunity for comment on the wording of Amendment No. 1 during December 9, 2022 to January 16, 2023. No new information or public meetings should be required for NPC to make a final recommendation.
- Any future Project modifications will be subject to the regulatory process as per NuPPAA and the Nunavut Agreement, including the consideration of any proposal by the NPC against the provisions of the applicable land use plan at that time. Those proposals will also be subject to the strict terms and conditions of Project Certificate No. 005, if approved.

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- The NPC already decided to recommend approval of Amendment No. 1 in 2014. The only outstanding matter is NPC's recommended wording of Amendment No. 1 to the signatories. Both Canada and Nunavut had provided support for the proposed wording with minor adjustments, which Baffinland supported. Canada has confirmed its acceptance of the revised wording proposed by Baffinland in December of 2022 and Nunavut stated its position in its 2019 submission.

As context, we provide relevant background below on the cumulative effects information that formed the basis for NPC's positive recommendations on Amendment No. 1 and Amendment No. 2 to the NBRLUP and explain how NPC's July 2019 request for additional information is now resolved.

- A. The NPC's process for Amendment No. 1 and Amendment No. 2 has met NBRLUP information requirements in respect of cumulative effects

Respectfully, NTI/QIA's and WWF's suggestion that, to date, the NPC has not considered the potential cumulative effects of the operation of the Steensby railway components of the Project together with hauling of ore along the Milne Inlet Tote Road and shipping via the Milne Inlet shipping route is factually incorrect. NPC explicitly considered the potential for these cumulative effects in its decision-making processes on Amendment No. 1 and No. 2, as follows.

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- 1. NPC confirmed that amendment application information requirements of the NBRLUP (including Appendices J and K and Section 3.5.11 of the NBRLUP) have been met for Amendment No. 1 and No. 2

Appendices J and K of the NBRLUP as well as Section 3.5.11 of the NRBLUP requires submission of an assessment of cumulative effects of the preferred transportation corridor route:

NRBLUP, Section 3.5.11 All parties wishing to develop a transportation and/or communications corridor shall submit to the NPC a detailed application for an amendment. This application must include an assessment of alternative routes, plus the cumulative effects of the preferred route. It shall provide reasonable options for other identifiable transportation and utility facilities.

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Baffinland provided two CEAs to NPC to support its decision-making on Amendment No. 1 and Amendment No. 2:

- Volume 9 (Cumulative Effects and Other Assessments) of the Mary River Project Final Environmental Impact Statement (February 2012) (the **2012 CEA attachment A**); and

- Volume 9 (Cumulative Effects and Other Assessments) of the Mary River Project Addendum to the Final Environmental Impact Statement (June 2013), (the **2013 CEA attachment B**).

NPC confirmed during the review process for both Amendment No. 1 and No. 2 that the CEA provided by Baffinland met the amendment information requirements of the NBRLUP:

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- <u>Amendment No. 1</u>: On May 17, 2012, NPC wrote to Baffinland that: "It has been determined by the NPC that adequate information has been provided by BIMC and parties to meet the requirements of the NBRLUP's Appendix J & K, and as such no further information is required. The NPC notes that this decision is consistent with the assessment by the NIRB on this point." On May 30, 2012, NPC wrote to NIRB and confirmed that: "After an absence, presence review of the Baffinland Iron Mines Corporation (BIMC) documents related to the Mary River project, the NPC observes that the provisions of section 3.5.11 and 3.5.12 related to BIMC Mary River Project concerning the Joint Review has been satisfied."
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- <u>Amendment No. 2</u>: The NPC issued reasons for decision on April 2, 2014 which confirmed "... the NPC has reviewed the FEIS and ERP Addendum including "Appendix 1B-4 – Concordance with EIS Guidelines (Appendices J and K of the North Baffin Regional Land Use Plan) and the Summary of Information and concludes that the Amendment Application has met the informational requirements of Appendix J" (see page 34) and "The NPC has also considered whether the guidelines in Appendix K have been met... The Amendment Application does meet those guidelines... Upon consideration of the evidence, submissions by the participants to the NPC's review and parties to the NIRB's review, and the NIRB's Final Report containing the NIRB's letter and recommendations to the NPC dated February 24, 2014, the NPC

concludes that Appendix K has been met. On this basis, the NPC has decided that the guidelines in Appendices J and K have been met..." (see pages 37-40).

- 2. NPC considered both Southern (Steensby railway) and Northern (Milne Tote Road and port) infrastructure components in recommending approval of Amendment No. 1 in 2013 and Amendment No. 2 in 2014
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Section 1.3.1 of the 2012 CEA considers the Milne Port, Milne Inlet Tote Road, Steensby Port, railway and shipping routes. Further, Section 1.3.1 of the 2012 CEA specifically considers the use of the Milne Inlet Tote Road for the purpose transporting iron ore from Mary River Deposits 1-9 to Milne Port as 'potentially induced activities' likely to occur should the Project proceed.

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All of the same project components were taken into consideration in the 2013 CEA, which considered the increase in intensity of use of the Northern transportation corridor (i.e. transportation of ore by truck) resulting from the ERP.

The NPC and parties were fully aware of the details of Baffinland's ERP application at the time the NPC issued its positive recommendations to the signatories on Amendment No. 1 to the NBRLUP. NPC was first made aware of the upcoming ERP application by NIRB on January 10, 2013, and undertook a comprehensive amendment process in relation to the development of the Northern transportation corridor commencing in mid-2013.

All parties were aware of the full scope of the Project (including the Steensby Railway and the intensified Northern trucking transportation activities) and NPC took this into consideration in issuing its recommendation on Amendment No. 2 in 2014. Intensified use of the Tote Road is explicitly acknowledged in the NPC's decision on Amendment No. 2 (see North Baffin Regional Land Use Plan Amendment Application – Reasons for Decision from Public Review, April 2, 2014) and the amended NBRLUP. It should be highlighted that the 2014 decision did not contain any recommendations regarding any necessary corresponding modifications to Amendment No. 1 as a result of the approval of Amendment No. 2, despite all party's understanding that the Southern and Northern transportation corridors would exist in unison.

Baffinland agrees with Canada that the NBRLUP Amendment No. 1 process is not the appropriate venue to assess cumulative effects of a current project and that NIRB processes will consider potential for cumulative effects associated with future project proposals. That process will continue to require positive conformity determinations from the NPC, which can include recommendations to the NIRB to address any potential cumulative effects concerns.

Baffinland also agrees with the May 10, 2019 submission of Nunavut that the 35 km transportation corridor included in Amendment No. 1 is a portion of the approved project defined in Project Certificate No. 005. In addition to being previously considered as part of the NPC amendment process as described above, cumulative effects of a Northern trucking operation in combination with a Southern rail operation have already been assessed, considered and approved under Project Certificate No. 005. Baffinland is authorized to proceed with all infrastructure and activities included within the scope of Project Certificate No. 005 (subject to operational permitting).

It is clear in the Nunavut Agreement and NuPPAA that NIRB (rather than NPC) is responsible for assessing cumulative effects associated with individual project proposals, which is the focus of the NTI/QIA and WWF submissions. This is acknowledged in the NBRLUP at Section 3.12 "Cumulative Effects and Ecosystems Monitoring":

Two articles of the NLCA relate to land use planning provisions and the cumulative environmental effects of development. These two articles refer to a process designed to include the assessment of cumulative effects of projects in relation to other development activities.

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Article 12.3.3 states that the NPC may refer an exempted project to NIRB for screening "where the NPC has concerns respecting the cumulative impact of that project proposal in relation to other development activities in a planning region." Article 13.4.4 states that, "Where the NPC has concerns respecting the cumulative impact of development activities in a planning region, it may refer water applications to NIRB for screening even through the application falls within Schedule 12-1.

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To the extent that cumulative effects are to be considered in respect of the narrower scope of an amendment to the NBRLUP, this has already been considered by NPC as set out in Section A of this letter above.

The 2012 FEIS provided the basis for approval of the Project and issuance of Project Certificate No. 005 in 2013. The NPC and NIRB's assessment included a thorough consideration of the potential for cumulative effects as set out in the 2012 CEA which formed part of the FEIS (see Section 6.3 of the 2012 NIRB Recommendation Report to the Minister, pp. 224-226). Project Certificate No. 005 was amended by NIRB in 2014 to add the transportation of up to 4.2 metric tonnes per annum (**Mtpa**) along the Northern transportation corridor to the approved project scope. The NIRB considered the potential

cumulative effects of approved project components – including the Steensby Railway – along with new proposed activities, based on the 2013 CEA which formed part of the ERP FEIS Addendum.

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In addition to being accepted by the NPC as sufficient to meet the NBRLUP information requirements to support Amendment No. 1 and Amendment No. 2, the 2012 CEA and 2013 CEA were sufficient for the purposes of the NIRB to conduct a thorough assessment of cumulative and other impacts at a much finer project-specific scale than what is required by the NBRLUP. The Mary River and ERP regulatory approval process included intensive involvement of and support from numerous interveners, including Canada, Nunavut, QIA, and NTI.

- C. With respect to NPC's July 26, 2019 request, there is no new information that would support an update to the 2012 and 2013 CEAs for NBRLUP purposes

The following section addresses the NPC's July 26, 2019 request for a CEA (the **NPC 2019 CEA Request**), which reiterates the following NPC request of September 28, 2018:

The NPC requests BIMC provide updates on the materials filed in support of the amendment application to reflect changes in the Mary River Project since the original materials were submitted, including consideration of a second railway North to Milne Inlet, or other projects that have been proposed or approved since that time. BIMC is also encouraged to provide suggested revisions to the wording of the amendment as it did as part of the Amendment #3 public review process.

Baffinland confirms there have been no changes to the Amendment No. 1 or No. 2 routes and intended uses, nor any changes to the NIRB-permitted infrastructure included in Project Certificate No. 005.

With respect to "consideration of a second railway North to Milne Inlet" referenced in the 2019 NPC CEA Request, as reported in our letter to you of November 24, 2022, the Phase 2 NIRB process was completed on November 16, 2022 with the Minister's rejection. Therefore, there are no cumulative effects to assess with respect to Phase 2.

With respect to *"other projects that have been proposed or approved since that time"* referenced in the 2019 NPC CEA Request, Baffinland remains the only industrial proponent with activities within the

Northern and Southern Transportation Corridors. The only applications that have proceeded are Baffinland's applications in 2018, 2019, and 2022 (respectively) to increase transportation within the Northern Transportation Corridor (Amendment No. 2) from 4.2 Mtpa to 6 Mtpa. Every one of those proposals has proceeded with the support of the QIA and NTI and in consultation with Inuit and the communities. In 2018, the NPC issued a positive conformity determination and referred the application to NIRB, who proceeded to issue an amended Project Certificate following the Minister's direction. In **2019 and 2022, NPC determined that continuing activities at 6 Mtpa was** <u>not a significant modification</u> **for the purposes of the NBRLUP, and referred the applications to NIRB**. NIRB then carried out an environmental assessment which (as noted above) ultimately resulted in the requested amendments to the Project Certificate being issued by NIRB in 2020 and 2022, with QIA and NTI's support.

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Therefore, there is no information that Baffinland could rely on to provide further CEA information on the Amendment No. 1 route, other than what was already provided to NPC in the 2012 and 2013 CEA (which, as noted above, NPC previously confirmed met the information requirements of the NBRLUP). Since that time, no other developments have been proposed, or approved within or in the general region of the south railway, which is the true scope of consideration before the NPC with respect to the potential cumulative effects of establishing a transportation corridor under Amendment No. 1.

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With respect to NPC's request in the July 26, 2019 letter for suggested amendment wording, Baffinland provided suggestions for NPC's consideration in its letter to NPC of November 24, 2022.

Based on the above, Baffinland's understanding is that there are now no outstanding actions required in respect of the NPC 2019 CEA Request. As noted in Section B of this letter, future applications for new projects or significant modifications to Project activities or infrastructure will continue to be subject to the Nunavut Agreement and NuPPAA requirement for a positive NPC land use plan conformity determination and referral to NIRB for the assessment of potential environmental and socioeconomic effects, including cumulative effects.

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- D. Baffinland is committed to working directly with Inuit to establish and implement Inuit-led monitoring programs in addition to Baffinland-led monitoring programs, which will oversee the construction and operation of the Steensby railway, and has recently made enhanced enforceable commitments under Project Certificate No. 005 respecting dust and wildlife

NTI/QIA's letter to NPC of January 16, 2023 references issues with the current project, but omits any mention of the significant and comprehensive actions that have been taken recently to address these issues. While the topic of current project effects does not have any relevance to revising the wording of Amendment No. 1, to provide NPC with the full context Baffinland is providing the following information on recent enforceable commitments it has made under the Project Certificate No. 005 to enhance its mitigation and monitoring programs.

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Baffinland is listening to Inuit and we are working collaboratively to take action to address the effects they may experience as a result of the Project. Most recently Baffinland has:

- expanded Inuit participation in the environmental working groups to all North Baffin Hunters and Trappers Organizations (**HTO**s); and
- hired Inuit Knowledge Holders and Community Relations Guides in each of the impacted communities to improve direct communications about project concerns and to help Baffinland understand and apply the IQ that is shared with us.
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In 2021, Baffinland funded an independent Dust Audit, supported by an Inuit Dust Audit Committee and is working with the committee to implement their recommendations once received.

Baffinland is continuing to engage directly with the communities of Sanirajak and Igloolik in the development and implementation of the studies required to support the final operational environmental permits needed to build the south railway and Steensby Port. Baffinland has committed to these communities that they will continue to be involved for the life of the Project in establishing and implementing the monitoring programs required of our approvals. This enforceable commitment was recently entrenched in Amendment No. 4 to Project Certificate 005, where Appendix B indicates *"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."*

Baffinland is taking the same community-centred approach with respect to its ongoing operations between the Mine Site and Milne Port. The development of the Inuit Stewardship Plan (an enforceable commitment under the recently amended Project Certificate No. 005 which will also be reflected in a revised Mary River Inuit Impact and Benefit Agreement (**IIBA**)) will only strengthen Inuit-led monitoring across the Project, addressing any concerns which have driven the submissions of NTI/QIA and the WWF.

NIRB spoke favorably to the efforts of all parties to improve the current Project in its Recommendation Report to the Minister and related correspondence of September 22, 2022:

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The Board is grateful to all who participated in the Board's assessment and shared their knowledge, experience and views with the Board during the written comment periods and at the Community Roundtable in Pond Inlet. The Board notes that Baffinland and several interested parties worked

through the Board's reconsideration process to identify and commit to several important changes to existing management, mitigation and monitoring measures aimed at reducing impacts, and improving working relationships and project monitoring. The Board appreciates these efforts and sees this work as a valuable outcome of the reconsideration process; the Board looks forward to Baffinland reporting back regarding the results of these changes.

...

In addition, the Board notes that Baffinland has made significant commitments with respect to developing an Inuit Stewardship Plan and is currently working with an independent Inuit-led Dust Audit Committee. The Board sees these commitments and activities as an important "reset" of key working relationships at the community level that are central to the collaboration required for the success of the current and future operation of the Mary River Project.

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In making its positive recommendation to the Minister on Amendment No. 4, the NIRB took into account letters of support from the Igloolik Hunters and Trappers Organization as well as the Hamlet of Sanirajak submitted in July – August 2022.

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QIA's letter to the Minister of Northern Affairs of September 26, 2022 confirms that Baffinland's new enforceable commitments address the most acute concerns respecting the current project, and confirms QIA's support.

On November 4, 2022, the NIRB issued Amendment No. 4 to Project Certificate No. 005 which included all the commitments made during the NIRB process and the additional commitments referenced in QIA's

letter to the Minister. Over 79 new commitments (including many specific to a 6 mpta trucking operation through Milne Port) developed in close collaboration with Inuit and with QIA are now appended at Appendix B to Project Certificate No. 005, many of which are designed to respond to concerns respecting dust and wildlife protection.

Project effects will continue to be thoroughly considered within the NIRB review and monitoring process.

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E. Canada and Nunavut support Amendment No. 1

In its letter of January 16, 2023, Canada has confirmed its continued support to amend the NBRLUP to create a transportation corridor south from the Mary River mine site to Steensby Inlet. Baffinland has no comments on or concerns with Canada's recommendations on updated wording proposed in its letter of November 24, 2022.

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As set out in Nunavut's letter to NPC of May 10, 2019:

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The Government of Nunavut (GN) supports the revised wording for the amendment to the North Baffin Regional Land Use Plan (NBRLUP) (Amendment No. 1). In 2014, the GN and the Government of Canada (GOC) rejected the original wording for Amendment No. 1 with written reasons. The revised wording satisfies the GN's issues from that time. The Nunavut Planning Commission (NPC) should complete its remaining obligations to revise the wording to Amendment No. 1 without delay.

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Baffinland appreciates the GN's previous submission on the subject of Amendment No. 1 and through their signatory role will consider the recommendations put forward by Canada and considered by the NPC.

- F. Conclusion: NPC has objectively satisfied it's requirements for Public Review complete its process and recommend revised Amendment No. 1 wording to the signatories

NPC has completed all steps necessary to satisfy the April 28, 2014 requests by Nunavut and Canada for revisions to Amendment No. 1 and has the information they need to resubmit Amendment No. 1 to the signatories. Based on this, Baffinland is asking that NPC provide the signatories with revised Amendment No. 1 wording at its earliest convenience.

To summarize, Baffinland has met all information requirements of the NBRLUP in relation to Amendment No. 1:

- NPC already confirmed that Baffinland met the requirements of Appendix J and K of the NBRLUP. This information included the 2012 CEA and 2013 CEA which provided comprehensive information on cumulative effects, including the cumulative effects of transportation along both the Northern and Southern corridors, which NPC considered in its decision to recommend Amendment No. 1 and Amendment No. 2 to the signatories.
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- The factors that NPC originally referenced in respect of their 2019 CEA Request have since been resolved.
- An updated CEA is not required for NPC to issue revised draft wording of Amendment No. 1 to the signatories. Amendment No. 1 has already been recommended for approval and accepted, and re-consideration of that recommendation is not the subject of the current request. Additional CEA information is not relevant to the wording of Amendment No. 1.

Per Rule 5.2 of the NPC Internal Procedure, "Amendments to Land Use Plans" (March 2015), a public review provides opportunity for public input: it does not require public meetings, nor is it appropriate to undertake public meetings in these circumstances:¹

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¹ 5.2 A Public Review provides an opportunity for public input; it does not necessarily imply a public meeting or hearing. The need for a public meeting will depend on the significance of the amendment and the degree of public concern/interest the Commission anticipates the proposal may generate. If the Commission believes the level of public concern/interest is not significant, the public review may be conducted by providing the opportunity for written submissions for presentation at a regular Commission meeting.

 $^{^2}$ 5.2 A Public Review provides an opportunity for public input; it does not necessarily imply a public meeting or hearing. The need for a public meeting will depend on the significance of the amendment and the degree of public concern/interest the Commission anticipates the proposal may generate. If the Commission believes the level of public concern/interest is not significant, the public review may be conducted by providing the opportunity for written submissions for presentation at a regular Commission meeting.

- The NPC has already recommended that Amendment No. 1 should proceed, and the Steensby Railway and transportation of ore within the Northern transportation corridor is already approved under NIRB Project Certificate No. 005. The scope of the NPC's current task is focused narrowly on submission of revised wording for Amendment No. 1.
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- The NPC has provided several opportunities between 2019 and 2023 for public input on Amendment No. 1. And at no point have community representatives indicated any degree of public concern. This process is consistent with the Public Review requirements of Rule 5.2, which does not require in-person public meetings or hearings, especially in the event that no public concern has been raised.
- The NPC previously held joint public hearings with NIRB on Amendment No. 1 and NPC public hearings on Amendment No. 2.
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- There have already been multiple public opportunities for comment on proposed Amendment No. 1 wording (in 2019 and in 2022-23), and Canada, GN, NTI/QIA, Baffinland, and WWF have all participated in those opportunities.
- The issues identified in the NTI/QIA and WWF letter are beyond the scope of the current NPC request, and in any event are being addressed under Project Certificate No. 005 terms and conditions and enforceable commitments in accordance with NuPPAA and the Nunavut Agreement, as set out in Part D of this letter above.
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Baffinland welcomes direct communications with QIA and NTI to discuss these matters, and we appreciate the close collaboration with QIA in particular in developing the recent commitments under Amendment No. 4 of Project Certificate No. 005 to address matters of concern with respect to the current project. We invite them to reach out to us directly to continue such discussions in accordance with the Project Certificate and the IIBA.

Taking into consideration that this task has been outstanding since April 28, 2014, it would be procedurally unfair to the applicant for the NPC to extend this process any further. Accordingly, Baffinland encourages NPC to complete its process and issue revised wording for Amendment No. 1 to the signatories without any further public meetings/information sessions or written comment periods and without further delay. This action is supported by the comprehensive written record and NPC public processes to date that have supported Amendment No. 1 and Amendment No. 2 (which included consideration of cumulative effects of a Northern and Southern transportation corridor).

Please do not hesitate to reach out to me directly should you require any further information in respect of these matters.

Sincerely,

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Megan Lord-Hoyle

Megan Lord-Hoyle, VP Sustainable Development Baffinland Iron Mines Corporation

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