

# Chronology and History of the Mary River Project and NBRLUP Amendments

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## A. Introduction

This document provides a summary of:

- the approval of the Mary River Project in December 2012, including reference to the NIRB's consideration of the potential for cumulative effects arising from the Mary River Project;
- the NPC's recommendation in December 2013 to amend the North Baffin Regional Land Use Plan (**NBRLUP**) to include an approximately 35 km section of the railway from the Mary River Mine site to Steensby Port (the **South Railway**) in an amendment to the NBRLUP (**Amendment No. 1**);
- the NPC's amendment of the NBRLUP in April 2014 (**Amendment No. 2**), which permitted the development of a transportation corridor with two components, one terrestrial and one marine, which together include the Milne Inlet Tote Rad, Milne Port and a marine shipping route (the **Milne Inlet Tote Road and Marine Transportation Corridor**);
- the NIRB's approval of the Early Revenue Phase (**ERP**) in May 2014, which added an initial development phase to the approved Mary River Project involving development of a 3.5 million tonne per annum (Mt/a) road haulage operation from the Mary River Mine site to a port facility at Milne Port for shipping of iron ore during the open water season;
- the NPC's amendment of the NBRLUP in May 2018 (**Amendment No. 3**), which amended the Milne Inlet Tote Road and Marine Transportation Corridor to permit the development of railways (the **Mary River Transportation Corridor**); and
- the NIRB's consideration of Baffinland's 2018 Production Increase Proposal (which did not trigger any related NPC plan amendment processes).

For convenience, we will provide to the NPC a set of electronic copies of the materials referred to in the chronology in section B below.

The document also provides an update on the materials filed with NIRB since the issuance of Amendment No. 3 in support of the Phase 2 amendment application to reflect the proposed second railway North to Milne Inlet (the **North Railway**). NIRB has not yet completed its environmental assessment of the Phase 2 amendment application, and Baffinland has not yet been granted permission to proceed with Phase 2 (including the North Railway). We have not provided electronic copies of these materials as they are part of the current and ongoing NIRB review and assessment and are not relevant to the completion of the South Railway amendment.

This document also includes a summary which provides further detail on how cumulative effects were considered at each development stage.

We have also included as Schedule 2 a revised draft of Amendment No. 1, for consideration by the NPC and the signatories. Baffinland is currently preparing translated versions of the draft Amendment No. 1 and these will be provided to the NPC as soon as they are available.

## **B. Summary History of the Mary River Project and NBRLUP Amendments**

### **1. Mary River Project Review and Approval and Proposed Amendment No. 1 – 2008 to 2014**

The following is a summary of the major steps in the regulatory review process for the Mary River Project, with particular reference to the determination of conformity under the NBRLUP. The documents referenced in this summary up to Amendment No. 3 are attached in chronological order.

#### March 14, 2008

Baffinland submitted the Mary River Project Development Proposal to the NPC, the NIRB and the Nunavut Water Board (**NWB**) for consideration.

As stated in the March 14, 2008 cover letter to the NPC, the NIRB, and the NWB, and as detailed in the Mary River Project Development Proposal, the Mary River Project includes the following components:

- an 18 million tonne per year conventional open pit iron ore mine at Mary River;
- a railway connecting Mary River to Steensby Inlet; and
- an all-season deep sea port at Steensby Island.

In the same March 14, 2008 cover letter to the NPC, the NIRB, and the NWB, Baffinland highlighted the following:

- “Land Use Plan Conformity – A portion of the Project is located within the North Baffin Planning Region, which is subject to the North Baffin Regional Land Use Plan (the Plan). Accordingly, NPC conformity review is required, and the roadmap [referring to Baffinland’s regulatory roadmap] contemplates that this process will commence immediately.
- Land Use Plan Amendment – A portion of the proposed railway line (approximately 34 kilometres) is within the North Baffin Planning Region. We understand NPC views this as a proposed transportation corridor thereby requiring Plan amendment. The roadmap is consistent with Term 3.5.11 of the Plan, and the NPC’s “Interpretation – North Baffin Regional Land Use Plan Terms 3.5.10, 3.5.11 and 3.5.12”, both of which require that new corridors under the Plan be subject to a coordinated NPC and NIRB public review.”

April 7, 2008

The NPC wrote to Baffinland acknowledging receipt of the Mary River Project Development Proposal and enclosing an Application to Determine Conformity with the NBRLUP with questions to be answered by Baffinland.

Baffinland submitted responses to the Application Questionnaire. Of particular relevance is question 21 of the Questionnaire and Baffinland's response, which read as follows:

"MARINE AND TERRESTRIAL TRANSPORTATION

21. Corridor: s3.5.11, s3.5.12 and appendix J & K: Does the proposal consider the development of a transportation and/or communications corridor?

Yes

No

*A rail line is proposed within a portion of the North Baffin Planning Region"*

April 30, 2008

The NPC wrote to NIRB, the Qikiqtani Inuit Association (**QIA**), Indian Affairs and Northern Development (**INAC**, as it was then known), the NWB, and Fisheries and Oceans Canada (**DFO**) (with a copy to Baffinland) indicating as follows:

"The NPC has completed its review of the above noted project proposal. This project conforms with the North Baffin Regional Land Use Plan (NBRLUP) and we are forwarding it to NIRB for screening. We draw your attention to the provisions of sections 3.5.11 and 3.5.12 of Appendix "C" of the NBRLUP, a copy of which is enclosed, and note that a joint process to address the prospective transportation corridor is contemplated by those provisions. NPC looks forward to working with NIRB in accordance with those provisions."

May 2, 2008

NIRB wrote to Baffinland (copies to the "Distribution List") confirming that NIRB had received the April 30, 2008 positive conformity determination from the NPC and indicating that NIRB would screen the Project Proposal under the provisions of Article 12 of the Nunavut Agreement. NIRB referenced the requirement for a joint review by the NPC and NIRB with respect to the proposed transportation corridor and sought comments from all parties respecting options for coordination with the NPC on that issue.

June 27, 2008

NIRB issued its Screening Decision for the Mary River Project and recommended to the Minister of INAC that the Project required a review under Part 5 or 6 of Article 12 of the Nunavut Agreement.

February 11, 2009

The Minister of INAC referred the Mary River Project Proposal to NIRB for review under Part 5 of Article 12 of the Nunavut Agreement, and encouraged NIRB and the NPC to develop an arrangement to satisfy the requirements of the land use planning process “while not unduly encumbering the Board’s Part 5 review process”.

March 13, 2009

NIRB issued a “Draft Scope of the Mary River Project” for the purpose of the Part 5 review.

In its cover letter to the Mary River Distribution List (copied to the NPC and other agencies), NIRB indicated as follows:

“As outlined in previous correspondence to this distribution list (see NIRB/NPC letter dated February 26, 2009), NIRB’s Part 5 Review of the Project will include public review to satisfy the requirements of Appendices J and K of the NBRLUP, and address the prospective transportation corridor proposed by the Project.”

NIRB also summarized the Mary River Project as follows:

“The proposed major project components associated with the Project include:

- Mine at Mary River
- Railway transportation of iron ore from Mary River Mine Site to Steensby Inlet all season deep sea port
- Operation of all-season deep sea port at Steensby Inlet
- Operation of open water shipping at Milne Inlet and Milne Inlet Tote Road
- Marine Shipping:
  - o Open water shipping from Milne Inlet, through Eclipse Sound and Pond Inlet, via Baffin Bay and Davis Strait to south Canada and Europe.
  - o Open water and year round shipping (ice breaking shipping) from Steensby Inlet through Foxe Basin and Hudson Strait, to Southern Canada, or cross Atlantic Ocean to Europe.
- Air traffic and ongoing exploration.”

The Draft Scope referred to the joint process for the proposed railway corridor as follows:

“5. The Requirements of Northern Baffin Regional Land Plan

The Mary River Project includes a component of railway from Mary River to Steensby Inlet port site, which is partially located within Northern Baffin Land Plan Region. Pursuant to 3.5.11 and 3.5.12 under Appendix C of North Baffin Regional Land Use Plan (NBRLUP), a joint

process to address the prospective transportation corridor is contemplated by those provisions. Thus, in coordination with the Nunavut Planning Commission (NPC), the NIRB's scoping process will also reflect the requirements of the NBRLUP, and ultimately will be included in the EIS Guidelines to direct the proponent to the information required to satisfy the NPC's land use planning requirements, more specifically the information requirements to meet the provisions of Appendix J and K of NBRLUP (attached with this draft scope)."

March 16, 2009

NIRB and the NPC jointly issued a letter outlining the proposed process for the Part 5 review of the Mary River Project and the implementation requirements of the NBRLUP.

September 4, 2009

NIRB, the NPC, and the NWB issued a joint letter including Appendix B which provided a detailed description of the process to be followed for the NIRB/NPC joint review of the proposed transportation corridor.

Appendix B to the joint letter, which outlined the NIRB/NPC joint review process for the Mary River Project, noted as follows:

"It has been noted that many issues pertaining to the NIRB's impact assessment of the railway and of the Project are closely related to the information requirements of the NBRLUP, and may also aid in the NIRB/NPC joint review of the prospective transportation corridor. Section 1.4.1 of the Revised Draft EIS Guidelines document speaks to the requirement of the Proponent's future Draft EIS (DEIS) submission to address the information required by Appendices J and K of the NBRLUP, with cross referencing to relevant sections of the DEIS. The DEIS will then serve as the Proponent's formal application to the NPC for an amendment to the NBRLUP, minimizing unnecessary duplication."

November 16, 2009

NIRB issued the "Guidelines for the Preparation of an Environmental Impact Statement" for the Mary River Project.

The Guidelines confirmed that NPC and NIRB "have made significant efforts to cooperate and coordinate their efforts in the NIRB's Part 5 review for the Mary River Project".

Section 1.4.1 of the Guidelines addressed the "Joint Review of Transportation Corridor" and states as follows:

"In keeping with the Minister's direction and the provisions of the NBRLUP noted above, NIRB and the NPC have developed an

arrangement to jointly review the transportation corridor (railway) proposed by the Project. The Proponent is required to include the project-specific information stipulated in Appendices J and K of the NBRLUP (see Appendix B), within its EIS. Given that much of the required information pertains directly to the impact assessment of the Project, the Proponent should cross reference where the required information can be found within the body of the EIS. It is recommended that an appendix be included in the EIS, with references to all the information required by Appendix B, which will then serve as the Proponent's formal application for an amendment to the NBRLUP."

The Guidelines also stated that Baffinland

"Is expected to carry out its cumulative effects assessment (CEA) with consideration for the following factors:

...

- Consideration of Effects on VECs and VSECs: An effective CEA will allow the Proponent to more accurately assess how the interaction of impacts from the various Project components and activities, and from other past, present and reasonably foreseeable projects, might impact in a cumulative fashion on selected VECs/VSECs;
- Evaluation of significance: Effective CEA requires identifying and predicting the likelihood and significance of potential cumulative effects, including direct, indirect and residual impacts. The Proponent shall consider and determine the significance of the cumulative effects using the criteria described in Subsection 7.11.

The CEA for the Project shall address, but not be limited to, the following areas:

- Effects of other past, present and reasonably foreseeable future projects and activities...;
- Effects of potential future development of other identified deposits (#2, #3, and #4);
- Effects of an increased lifetime for the railway and port facilities resulting from possible expansion of the currently proposed project".

October 12, 2011

The NPC issued a letter indicating that it was preparing a draft Nunavut Land Use Plan which would replace the NBRLUP and indicated that "As such the NPC will not be seeking an amendment to the NBRLUP".

October 25, 2011

Nunavut Tunngavik Incorporated (**NTI**) wrote to the NPC and NIRB asking the NPC to reconsider the October 12, 2011 letter and proceed with the amendment process that was currently underway.

October 31, 2011

Baffinland also wrote to the NPC requesting that it reconsider the October 12, 2011 letter and complete the joint review process established between the NPC and NIRB respecting the railway transportation corridor.

November 5, 2011

The NPC wrote to Baffinland confirming that the NPC remained committed to the joint review process with NIRB.

The NPC letter referred to the consideration of a plan amendment to “include the new transportation corridor”. The letter stated as follows:

“To assist with Baffinland Iron Mines Corporation understanding of the Terms of the NBRLUP please note that the NBRLUP contains conformity requirements, actions and recommendations. These are identified in NBRLUP Chapter 3. Also see footnote 7 on Page 29 for additional clarity. Terms 3.5.11 and 3.5.12 contain both conformity requirements and actions which, although related, must be implemented independently. For instance the “actions” set out in Term 3.5.12 of the NBRLUP provides an option for the Commission to consider a plan amendment to “*include the new transportation corridor*”. It is important to consider that:

- an amendment to show the new transportation corridor means to add a map showing the final location of the corridor.
- the NBRLUP requires alternative routes to be considered as part of the plan amendment request. Therefore, it is conceivable that the final location of the bed of the railway could be altered prior to the final approval of the NIRB Hearing Report.
- The final decision on the location of the new transportation corridor will be based upon the final approved routing of the railway.
- The completion of the action component of Term 3.5.12 has no effect on the Commission’s positive conformity determination of April 30, 2008, the current NLCA Part 5 review, or the issuance of any permit, licence or authorization.”

March 30, 2012

The NPC advised NIRB that it had completed its review of the Final Environmental Impact Statement (FEIS) for the Mary River Project to verify whether it had included information to satisfy Appendix J, Item 3 of the NBRLUP, and that "the NPC observes that more information regarding the suitability of the corridor for the inclusion of other possible communication and transportation initiatives (roads, transmission lines, pipelines, etc.) be provided." The NPC indicated that it appreciated the opportunity to be involved in the joint review process with NIRB in ensuring that the information requirements of NBRLUP, Appendices J and K were being met for the Project.

April 30, 2012

NIRB responded to the NPC, acknowledging that additional information would be provided during the process and indicating that "the Board believes that sufficient information has now been provided in support of Baffinland's application for a transportation corridor to meet with the specific requirements of Appendices J and K that can be reasonably addressed through NIRB's review". NIRB indicated that it would defer to the NPC with respect to certain issues such as the role of the railway corridor to provide for improved access to other resources.

May 17, 2012

The NPC wrote to Baffinland stating 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.

The NPC and the NIRB hope to reach an agreement and verification on a decision determining whether NBRLUP's Appendix J and K requirements have been met by May 30, 2012."

May 30, 2012

The NPC wrote to NIRB confirming as follows:

"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 sections 3.5.11 and 3.5.12 related to BIMC Mary River Project concerning the Joint Review has been satisfied."

September 14, 2012

NIRB issued its Final Hearing Report on the Mary River Project. Section 1.8 of the Final Hearing Report summarized the "NPC/NIRB joint review of the transportation corridor" (Final Hearing Report, pp. 16-20).

The Final Hearing Report included the following excerpt from the NPC presentation at the Final Hearing:

“The Commission concludes that any requests, whether to amend the north Baffin land use plan to include the new transportation corridor would not advance until the final location of the Railway is determined. The final decision on the location of the Railway will not be provided to the Commission until the minister accepts the Nunavut Impact Review Board final hearing report and a Nunavut Impact Review Board final certificate is issued.”

December 3, 2012

The Minister accepted the recommendation of NIRB for the issuance of a Project Certificate.

December 28, 2012

NIRB issued the Project Certificate for the Mary River Project (Project Certificate No. 005). Maps showing the proposed alignment of the railway corridor, provided to NIRB and to the NPC and filed as Exhibit #3 in the Final Hearing, are referenced in Section 2.0 Project Description of the Project Certificate. By copy of the December 28, 2012 correspondence to the NPC, NIRB indicated its wish to notify the NPC that the Project Certificate had now been issued and that the NPC could proceed with consideration of Baffinland’s application to amend the NBRLUP to allow for construction of the railway corridor proposed for the Mary River Project.

December 9, 2013

The NPC wrote to the Minister of AANDC and to the Minister of Environment (GN) stating that:

“As background the proposed Mary River Project (the proposal) is located partially in the NBRLUP planning region. Approximately 35 km of the 180 Km long land portion of the transportation corridor is located inside the North Baffin planning region. The NPC and NIRB reviewed the proposal publically through a series of scoping sessions and agreed on May 30, 2012 that the Mary River project proposal meets those guidelines.

The NPC has determined that in accordance with the NLCA and the NBRLUP that an amendment to include the “transportation Corridor” in the NBRLUP is necessary and therefore recommends to the Ministers to amend the NBRLUP. I have enclosed two documents 1) The proposed amendment to the NBRLUP, 2) A map showing the location of the “Transportation Corridor”.”

The letter included a draft of “Amendment Number 1 to the NBRLUP” and a map of the 35 km portion of the Steensby railway corridor from the Mary River mine site to the NBRLUP boundary.

April 28, 2014

The Minister of AANDC wrote to the NPC raising concerns that the draft amendment did not provide for a general multi-use transportation corridor, but rather restricted the corridor to a single user and a

single use. The Minister of AANDC indicated the expectation that the NPC would publicly solicit feedback on potential recommendations from appropriate parties, including government officials, prior to issuing its revised recommendation to the Ministers. The Minister of Environment (GN) sent a similar letter to the NPC on the same date.

May 22, 2014

The GN provided detailed comments on the NPC draft Amendment No. 1.

June 5, 2014

The Government of Canada provided additional detailed comments on the draft amendment.

June 2014 to September 2018

As outlined further below, Baffinland has requested that the NPC complete the Amendment No. 1 process. In accordance with section 11.5.7 of the Nunavut Agreement, where an amendment is referred back to the NPC for reconsideration by the Ministers, "The NPC shall reconsider the plan in light of written reasons and shall resubmit the plan to the Ministers for final consideration."

To Baffinland's knowledge, the NPC has not yet circulated a revised form of Amendment No. 1 to the NBRLUP designated signatories. The terms of the draft amendment as issued were not reconsidered and the process for finalizing the proposed amendment was not completed.

August 23, 2018

In a letter dated August 23, 2018, the NPC confirmed its intention to complete and resubmit Amendment No. 1 for consideration by the signatories.

September 14, 2018

The Government of Canada stated that its "preference is that further public review is likely not necessary" but it "would support proceeding with further public review if there is a request with strong rationale for it from planning partners."

September 20, 2018

The GN stated that it will respect the NPC's chosen process forward with regards to Amendment No. 1 and that it intends to fully participate in that process.

The NTI recommended that a public review was necessary, and stated that:

"Section 3.5.11 requires an amendment application to include an assessment of cumulative effects of the proposed amendment. The original amendment proposal did not consider the cumulative effects of a Steensby Inlet railway in addition to a Milne Inlet railway as this transportation measure was not contemplated at the time. The joint NPC and NIRB review did not address the significant addition of a second railway line. At the time of the joint review, the terrestrial component of the transportation corridor was a road from the Mary River mine site to Milne Inlet. BIMC's environmental impact submissions and cumulative effects assessment, from that review, do not address

the environmental, social and cumulative impacts of a second railway line.

NTI's view is that the cumulative effects assessment requirement under section 3.5.11 of the NBRLUP cannot be met through a reconsideration of Amendment No. 1 that simply substitutes wording from Amendment No. 3. BIMC's original proposal for an amendment to the NBRLUP for a Steensby Inlet railway transportation corridor did not contemplate an existing railway to Milne Inlet and this important factor must be considered. NTI is also of the view that the public review requirements of section 3.5.12 of the NBRLUP and the guidelines set out in Appendices J and K will not be met without BIMC providing additional information on potential environmental, social and cumulative impacts, particularly on nearby communities."

In response to the NTI submission, each addition to the Project (including the ERP, and including Amendment No. 2 and Amendment No. 3) considered the cumulative effects. It is not correct to suggest that the cumulative effects of the changes and additions have not been considered.

The issue of cumulative effects has been expressly addressed at each stage of the development of the Mary River Project from the original project approval in 2012 through the ERP approval in May 2014, as well as the current NIRB reconsideration relating to Phase 2. Each application for amendment to the NBRLUP, including the application for Amendment No. 1 (the South Railway amendment), Amendment No. 2 (the Milne Inlet road and marine corridor amendment), and Amendment No. 3 (the North Railway amendment), has addressed the NBRLUP requirements for consideration of cumulative effects.

As set out in further detail below, the NPC considered potential for cumulative effects arising from the establishment and amendment of transportation corridors as set out in Amendment Nos. 1, 2 and 3 respectively and sequentially. As well, the potential for future development of transportation corridors was considered in detail in the Mary River FEIS and ERP Addendum.

As acknowledged in the NBRLUP and prescribed by the Nunavut Agreement and the *Nunavut Planning and Project Assessment Act (NuPPAA)*, NIRB is to consider the potential for cumulative effects arising from individual project proposals. As prescribed, the NPC referred the Phase 2 project proposal to NIRB for environmental assessment and the topics outlined by NTI in its letter are currently under consideration within the Project Certificate No. 5 reconsideration process currently underway. The QIA are actively participating in that process, as are the communities and HTOs. The NTI is included in the Mary River Project distribution list (dated February 11, 2009).

The issues of cumulative effects raised in the NTI letter of September 20, 2018 have been, and are being, thoroughly considered by NIRB within the regulatory process established by the Nunavut Agreement and referenced in the NBRLUP. Baffinland emphasizes that information respecting the current and ongoing NIRB review of Phase 2 is not necessary or appropriate for the NPC or the signatories to consider in relation to the issuance of Amendment No. 1. As determined previously by the NPC, the information requirements of Appendices J and K of the NBRLUP were already previously met in relation to Amendment No. 1, and subsequently in Amendment Nos. 2 and 3.

September 28, 2018

The NPC issued a letter confirming a process respecting Amendment No. 1 including requests to Baffinland to provide updates on materials, and to provide suggested revisions to the wording of Amendment No. 1.

**2. *The ERP and NBRLUP Amendment No. 2 – 2013 to 2014***

January 10, 2013

Baffinland wrote to NIRB to advise NIRB of Baffinland's intention to proceed with the Mary River Project in two phases – the ERP and the Rail Phase (as approved in the Project Certificate).

This proposed modification was due to the drop in iron ore prices, which made the South Railway economically infeasible. The cost and shortened construction time under the ERP would enable production and revenue generation to commence sooner, with the objective of facilitating the second and larger Rail Phase of the Project at a later date. The ERP would allow for training, employment and business opportunities for the region to commence in 2013 and allow all parties to be in a stronger position to realize maximum benefits once the second larger Rail Phase development proceeded.

Baffinland was clear in the ERP description that it intended to eventually proceed with the approved South Railway.

In its January 10, 2013 letter, Baffinland noted that it remained committed to the Mary River Project as approved under the Project Certificate and reintroduced the concept of delivering iron ore to Milne Port (originally proposed and evaluated in the Draft Environmental Impact Assessment (DEIS) but subsequently removed prior to the submission of the FEIS).

The January 10, 2013 letter summarized as follows:

“The Early Revenue Phase (the proposed First Development Phase) will include development of a nominal 3.5 million tonne per annum (Mt/a) road haulage operation from Mary River to a small port facility at Milne Inlet for shipping of iron ore or during the open water season. The operation will be very similar in concept to the bulk sample program undertaken by Baffinland in 2008. Please refer to Appendix A for an overview of the Early Revenue Phase.”

The January 10, 2013 letter went on to indicate Baffinland's intention to provide, through an addendum to the FEIS, an updated environmental and socio-economic effect assessment for the activities proposed under the ERP.

Baffinland recognized that the ERP would require an amendment to the Project Certificate for the Mary River Project and potential amendments to other regulatory permits and licences. Baffinland requested direction from NIRB as to the review process required for consideration of the ERP.

The Project Proposal for the ERP described the additional activities or infrastructure of the ERP not previously reviewed as part of the Mary River Project as follows:

1. Mine Site
  - (a) loading of ore into trucks;
  - (b) truck fleet and maintenance facilities.
2. Tote Road
  - (a) haulage of ore by trucks along the Tote Road (note: upgrades to the Tote Road were assessed previously by NIRB as part of the Mary River Project).
3. Milne Port
  - (a) ore stockpiling at Milne Port.
4. Marine Shipping
  - (a) ore carrier loading at Milne Port;
  - (b) ore carrier shipping volume and timing.

The ERP Project Proposal is clear in describing the volume of the trucking traffic along the Tote Road. Table 1-2.1 to the Project Proposal indicates that during the ERP, 76 ore trucks will each make one roundtrip along the Tote Road per day and there will be 30 non-ore truck trips per day. (Note: the Mary River Project as approved by NIRB at that time included 30 truckloads per day along the Tote Road during the four year construction period and continued use of the Tote Road over the life of the Project).

#### January 14, 2013

NIRB acknowledged that Baffinland requested to amend the Project Certificate, and referred to the process under Sections 12.8.2 and 12.8.3 of the Nunavut Agreement for reconsideration of the Terms and Conditions of Project Certificate No. 5. NIRB indicated that it would seek direction from the Minister with respect to the proposed reconsideration.

NIRB requested comments on this process from the NPC and other agencies and parties.

#### February 7, 2013

The NPC responded to the January 14, 2013 letter from NIRB and indicated that a conformity determination would be required for the ERP.

#### April 13, 2013

The NPC wrote to Baffinland to summarize the procedure the NPC would perform to address conformity requirements of the NBRLUP in connection with the ERP.

#### June 12, 2013

Baffinland wrote to the NPC to provide the NPC with the ERP Project Proposal for the ERP and other information requested by the NPC, to enable NPC to make any required conformity determinations relating to the ERP. The June 12, 2013 letter included:

- the ERP Project Proposal for NPC conformity review;
- links to the Mary River Project Certificate No. 5 and the Type A Water Licence Application;
- determinations for HADD Authorizations under the *Fisheries Act*; and
- the Land Use Permit (required for a section of Crown land along Tote Road).

#### June 20, 2013

Baffinland delivered a copy of the ERP Addendum to the FEIS to the NPC and walked through the submission with the Executive Director and staff from the NPC. The ERP Addendum assessed the socio-economic and environmental aspects of additional activities not already assessed and approved under NIRB Project Certificate No. 005.

The ERP Addendum included an assessment of the potential effects of road haulage of ore to Milne Port along the Milne Port Road and concluded that the road haulage would not have a significant effect on valued ecosystem components (**VECs**) including air quality or terrestrial wildlife (ERP Addendum Volumes 5 and 6). This assessment was carried forward to Volume 9 of the ERP Addendum, which considered cumulative effects and concluded that the road haulage of ore would not result in cumulative effects on VECs including air quality or wildlife.

#### July 5, 2013

The NPC provided Baffinland with a questionnaire entitled “Nunavut Planning Commission Application to Determine Conformity with the North Baffinland Regional Land Use Plan”.

#### July 9, 2013

Baffinland wrote to the NPC enclosing the completed questionnaire (Application to Determine Conformity).

In response to question 21 of the questionnaire, Baffinland described the use of existing transportation corridors as follows:

#### “Terrestrial Transportation

Terrestrial Transportation will take place along the existing Tote Road between the Mary River Mine Site and Mine Inlet. The Tote Road has been in existence as a transportation corridor for many years (back to the 1960s) and is recognised as a public access easement under Article 21, Part 4 (Section 21.4.1) of the Nunavut Land Claim Agreement. Accordingly, the Early Revenue Phase (ERP) does not include the development of a new transportation corridor. The Tote Road has previously been included as part of the bulk sampling program which received a positive conformity determination from the NPC on January 22, 2007, and continues to form part of the Mary River Project, which received a positive conformity determination from the NPC, on April 30, 2008.

As indicated in the Project Proposal for Early Revenue Phase, which is Attachment 1 to our letter of June 12, 2013, the ERP will result in increases in the volume of traffic along the Tote Road. Under the Mary River Project, the Tote Road traffic included vehicles for equipment and supplies between Milne Inlet and the Mary River Mine Site. Under the ERP, additional traffic will include ore trucks transporting ore from the Mine Site to Milne Inlet. The addendum to the FEIS for the ERP includes an assessment of the potential effects of the increase in traffic along the existing Tote Road transportation corridor, for review by the Nunavut Impact Review Board.

#### Marine Transportation Corridor

The Marine Transportation Corridor to Milne Port has been used since the establishment of the port at Milne Inlet and the Tote Road. The Marine Transportation Corridor is shown on Figure 1-1.1 in both the FEIS and the Addendum to the FEIS for the ERP (Attachment 2 to this correspondence). This Marine Transportation Corridor has been established for many years and will not be changed under the ERP. As indicated in the Project Proposal for Early Revenue Phase which is Attachment 1 to our letter of June 12, 2013, the number of ship transits to and from Milne Port will increase. The Mary River Project included transits to and from Milne Port for ships bringing supplies and equipment. Under the ERP, shipping will also include ore carriers. This shipping will take place during the open water season, which Baffinland understand is in conformity with the North Baffin Regional Land Use Plan.

The shipping route into Milne Port was a component of the bulk sampling program which received a positive conformity determination from the NPC on January 22, 2007, and was also included as part of the Mary River Project, which received a positive conformity determination from the NPC on April 30, 2008.

The Addendum to the FEIS for the ERP includes an assessment of the potential effects of the shipping to Milne Port for review by the Nunavut Impact Review Board.”

In the July 9, 2013 letter, Baffinland submitted its belief that the ERP was in conformity with the NBRLUP for the following reasons:

- The ERP works and activities are a modification of the works and activities outlined in Baffinland’s previous project activities that received positive conformity determinations from the NPC; and
- The ERP uses the existing Milne Inlet Tote Road, which is recognized as a public access easement under Article 21, Part 4 (Section 21.4.2) of the Nunavut Agreement and

includes shipping of ore from Milne Port during the open water season only, and along the currently established shipping route through Milne Inlet and Eclipse Sound.

July 18, 2013

Baffinland wrote to the NPC to further summarize the request for a conformity determination, emphasizing that the Tote Road, Milne Port, and the shipping corridor were recognized as existing corridors and in conformity with the NBRLUP in the Positive Conformity Determination issued on January 22, 2007 by the NPC in connection with bulk sampling program, and in the Positive Conformity Determination issued by the NPC on April 30, 2008 for the Mary River Project. Both the Bulk Sampling Program and the Mary River Project involved extensive use of the Tote Road and Milne Port. The Bulk Sampling Program involved hauling ore by trucks via the Milne Inlet Tote Road to Milne Port and ocean shipment of ore along the shipping route. The Mary River Project involves extensive use of the Tote Road and Milne Port during the four year construction period for the Mary River Project and continuing use of the Tote Road and Milne Port as a route for the transportation of certain equipment, supplies and materials. It is emphasized that under the ERP shipping from Milne Port will only be done during the open water season (shipping during the open water season is specifically supported by the NBRLUP in Section 3.5).

July 24, 2013<sup>1</sup>

Baffinland emailed the NPC to include reference to the NPC “Interpretation – North Baffin Regional Land Use Plan – Terms 3.5.10, 3.5.11 and 3.5.12” document which indicated that these items relate “. . . to the application and review of project proposals that involve the establishment of new transportation or communications corridors . . .”, and submitted that this interpretation was consistent with the previous correspondence of Baffinland respecting the conformity determination for the ERP.

July 30, 2013

The NPC requested submissions on a number of issues with respect to the interpretation and application of the NBRLUP.

August 2, 2013

Baffinland provided a detailed chronology and letter in response to the July 30, 2013 request from the NPC, including responses to specific questions the NPC raised.

August 6, 2013

The NPC requested that Baffinland submit an application for the development of a transportation corridor pursuant to section 3.5.11 of the NBRLUP, prior to the NPC making a conformity determination.

August 9, 2013

Baffinland submitted a Revised Application to Determine Conformity which included, as part of question 21, an application for an amendment to the NBRLUP.

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<sup>1</sup> A copy of this correspondence has not been included.

August 13, 2013

The NPC issued a conformity determination indicating that the Project Proposal "conditionally conforms" with the NBRLUP provided that the joint review process is completed, that the NPC makes a recommendation to the Ministers on whether to amend the plan, and that the Ministers determine whether to amend the plan.

August 15, 2013

NIRB issued a letter to the Distribution List confirming that it had received the conditional conformity determination from the NPC and outlining the process for review of the ERP, including a NPC/NIRB joint review in relation to the application for amendment.

September 23, 2013

The NPC wrote to Baffinland to confirm that it had provided all relevant information required by Appendix J of the NBRLUP.

November 8, 2013

Baffinland provided a standalone summary of the information provided in the ERP Addendum with specific reference to Appendices J and K of the NBRLUP, including information on potential for cumulative effects.

March 17, 2014

After a detailed review of the ERP Proposal which included a public hearing in Pond Inlet in January 2014, NIRB issued its Public Hearing Report. NIRB recommended to AANDC that the ERP Proposal should be allowed to proceed (subject to revised and additional terms and conditions of Project Certificate No. 005).

April 2, 2014

After conducting a public review, the NPC issued reasons for decision in which it found that the guidelines in Appendices J and K had been met. The NPC stated that it would therefore recommend an amendment to the NBRLUP.

The Minister of AANDC and the Minister of Environment (GN) subsequently approved Amendment No. 2 of the NBRLUP, and came into effect on April 28, 2014. Amendment No. 2 permits the development of a transportation corridor with two components, one terrestrial and one marine, which together include the Milne Inlet Tote Road, Milne Port, and a marine shipping route.

April 28, 2014

The Minister of AANDC accepted NIRB's recommendation to allow the ERP Proposal to proceed.

May 28, 2014

NIRB issued Amended Project Certificate No. 005 authorizing the ERP.

### **3. Phase 2 of the Mary River Project and Amendment No. 3 – 2014 to present**

Baffinland initially proposed Phase 2 of the Mary River Project in 2014, through which Baffinland seeks to increase the volume of iron ore shipped to Milne Inlet. The initial Phase 2 Project Proposal was subject to various NIRB, NPC and Ministerial processes between 2014 and 2017 and the Phase 2 Project Proposal was significantly revised over that time period. The following summary focuses on the Phase 2 proposal as it has been accepted by the NPC and NIRB.

The Project Proposal for Phase 2 of the Mary River Project is an additional development phase of the Mary River Project. New infrastructure required under Mary River Phase 2 includes:

- Construction and operation of a railway track and ore loading station required to support the northern railway operation; additional primary crushing equipment and a mine truck workshop to support increased production; and expansion of the existing accommodation camp to support the increase of required personnel at the Mine Site.
- A new rail line approximately 110 km in length and generally following the routing of the existing Tote Road is proposed to be constructed and operated to connect the Mine Site with the Port Site. The rail route would only move away from the Tote Road where required due to terrain and other technical considerations. It is estimated that the cycle time of the rail way will be approximately nine (9) hours and five (5) to six (6) trains would be loaded per day.
- At the Port Site, a second ore dock to accommodate Cape sized vessels, a second ship loader, railway unloading and maintenance facilities, and additional support infrastructure will need to be developed in addition to an enclosed crushing facility.

#### February 3, 2017

Baffinland resubmitted its Phase 2 Project Proposal to the NPC for a land use conformity determination, as directed by NIRB. As set out in the Phase 2 Project Proposal, Baffinland had determined that a railway was needed to transport ore to Milne Inlet and proposed to revise the Mary River Project as currently approved to also include the North Railway.

Under Phase 2, the construction and operation of the North Railway, the expansion of the Milne Port PDA and construction of the ore dock No. 2 are the added components to be assessed.

#### March 6, 2017

The NPC wrote to Baffinland and stated that the proposed North Railway would constitute the development of a transportation corridor. Accordingly, the NPC requested that Baffinland provide additional information under the NBRLUP.

#### March 17, 2017

Baffinland submitted its application for an amendment to the NBRLUP in relation to the Mary River Phase 2 (**Amendment No. 3**). Specifically, Baffinland proposed an amendment to clarify that rail, as well as roads, could be used as a mode of transportation in the existing transportation corridor established in Amendment No. 2. In its response to the NPC's request for additional information, Baffinland stated that

“[n]o new route is proposed for the transportation corridor and therefore no change to the cumulative effects of the route will be realized.”

Baffinland went on to state that the preferred railway route would follow along the existing Tote Road and would therefore not result in the creation of a new linear development route in the area or represent an additional linear barrier to traditional land users and wildlife. Further, Baffinland stated that the development and use of the North Railway from the Mine Site to Milne Port would reduce and ultimately replace the use of haul trucks to transport iron ore, reducing the likelihood of potential disturbances to wildlife in the area. The NPC did not request any additional information on cumulative effects.

#### November 2017

The NPC then carried out a review of the proposed Amendment No. 3, including public hearings which took place in November 2017.

In a letter to the NPC dated November 30, 2017, the NIRB stated that from the NIRB's perspective Appendix J had been "reasonably" met based on the current stage in the process. The NIRB's letter says:

"The NIRB observes that, as noted in the submissions of the parties, the information requirements associated with Baffinland's Amendment 3 Application must be viewed in the full context of the existing and approved scope of the original Mary River Project Proposal, the subsequent Early Revenue Phase Project Proposal and the Commission's previous conformity determinations and NBRLUP plan amendments. In addition, the NIRB recognizes that the level and extent of impact assessment information required by the Commission to make its determination as to whether or not the proposed amendment to the NBRLUP should be granted may differ markedly from the level and extent of the information that will subsequently be required by NIRB to complete the assessment of all components of the proposed Phase 2 Development Project Proposal ... From the NIRB's perspective, with the important recognition that the existing transportation corridor has been previously fully assessed by the NIRB, and that this information can and should properly inform the consideration of the current Amendment #3 Application, the NIRB has concluded that the majority of the specific information required by Appendices J and K of the NBRLUP that could reasonably be expected to be provided at this stage in the process has been provided."

Baffinland subsequently provided additional information to the NPC on the topics of topography, soil, permafrost, wildlife and the availability of granular supplies noted in NIRB's letter. On the topic of caribou mitigations in its submission to the NPC of December 19, 2017, Baffinland wrote:

"... during the informal public hearing, Baffinland provided a summary of caribou-related mitigation for rail (see our memo of November 29, 2017

filed on the NPC public registry prior to the public hearing). This summary provides a listing of caribou protection measures established through the NPC and NIRB processes related to the Mary River Project (including the Southern railway) and the Early Revenue Phase Project. These caribou protection measures are detailed and extensive. Again, Baffinland is fully committed to a full review of these caribou protection measures as they would pertain to the construction and operation of a Northern railway. This issue will clearly be the subject of comprehensive review and consideration in any environmental assessment review process for the Phase 2 Project.” [emphasis added]

#### March 18, 2018

The NPC released its Public Hearing Report in which the NPC confirmed that the requirements of Appendix J and K had been met and recommended that Amendment No. 3 be approved by the designated signatories for inclusion in the NBRLUP. The NPC stated that the consideration of caribou protection measures was outside the scope of their public review and noted that it was for NIRB to deal with project impacts. The NPC recommended that NIRB review the proposed North Railway and that any impacts should be considered together with the impacts of Baffinland's currently approved use of the road.

#### March 23, 2018

Baffinland responded to the NPC's March 18, 2018 Public Hearing Report, stating that it was pleased that the NPC has recommended that the terrestrial corridor currently outlined in Appendix 'Q' be amended to include the potential use of the corridor for a railway and related infrastructure.

Baffinland also stated that, as far as it was aware, the NPC has not provided the Ministers with a reconsideration of the proposed Amendment No. 1, which remains outstanding.

#### May 8, 2018

The Minister of Crown-Indigenous Relations and Northern Affairs Canada (**CIRNAC**) (April 10, 2018), the Minister of Environment (GN) (April 16, 2018), and the President of the NTI (May 8, 2018) all approved Amendment No. 3, which came into effect on May 8, 2018. Amendment No. 3 clarified that the terrestrial component of the transportation corridor generally described in Amendment No. 2 included railways.

#### October 12, 2018

The following materials are of particular relevance to the current ongoing NIRB Reconsideration of the Phase 2 proposal (we have not provided copies of the Phase 2-specific materials as they relate to a current and ongoing NIRB process and they are not relevant to completion of Amendment No. 1):

- Amended EIS Guidelines for Mary River Phase 2 dated October 6, 2015 (specifically section 7.8 "Cumulative Effects Assessment");

- letter from Baffinland to the NPC dated March 17, 2017 regarding the proposal for an amendment to the NBRLUP in relation to the Mary River Phase 2 Expansion Project (application for Amendment No. 3);
- the NPC Report on Public Review regarding Amendment No. 3 dated March 18, 2018;
- letter from the NPC to the Minister of CIRNAC, the Minister of Environment (GN), and the NTI dated March 18, 2018 regarding the recommendation of Amendment No. 3;
- letter from the Minister of CIRNAC to the NPC dated April 10, 2018 regarding acceptance of recommended Amendment No. 3;
- letter from Minister of Environment (GN) to the NPC dated April 16, 2018 regarding acceptance of recommended Amendment No. 3;
- letter from the NTI to the NPC dated May 8, 2018 regarding acceptance of recommended Amendment No. 3;
- Mary River Phase 2 Project Description dated August 2018; and
- the Mary River Phase 2 EIS dated August 2018 and revised September 2018;

NIRB initiated the public technical review of the Phase 2 Addendum submitted by Baffinland for the “Phase 2 Development” project proposal by asking parties to submit Information Requests (**IRs**) by November 23, 2018. Following submission of the IRs, the NIRB forwarded the submissions to Baffinland with guidance on responding to IRs from parties. NIRB received the IR Response Package from Baffinland on December 18, 2018. The 60 day NIRB technical review period commenced on December 21, 2018 and the NIRB and NWB Joint Technical Meeting is currently scheduled for March 12 to 15, 2019. The NIRB public hearing is currently scheduled for May 7 to 11, 2019 in Pond Inlet. Dates have not yet been set for the NWB public hearing.

The EIS Guidelines issued by NIRB for the Phase 2 Project Proposal include specific requirements for the consideration of the potential impacts of the proposed road and rail operations within the Milne Inlet terrestrial corridor as authorized under Amendment No. 3. The cumulative effects of the increased traffic are assessed in section 1 of TSD-27 of the Phase 2 Addendum. The Phase 2 Addendum concludes that the increases will not result in significant adverse environmental effects and that there will not be significant cumulative effects.

During the ongoing reconsideration of the Phase 2 Project Proposal, NIRB will be considering submissions from federal and territorial agencies, the QIA, and other parties with respect to these potential effects. NIRB will consider all of the information provided by Baffinland and other parties in reaching its conclusions as part of its final report on Phase 2. It is expected that any approval of the Phase 2 Project Proposal will include ongoing conditions requiring monitoring of direct and cumulative effects of the Project including activities within the transportation corridors.

#### **4. 2018 Production Increase Proposal and Amendment to Project Certificate**

##### April 30, 2018

On April 30, 2018, Baffinland submitted to the NPC and NIRB the “Production Increase, Fuel Storage and Milne Port Accommodations Modification Proposal” (Production Increase Proposal).

##### May 18, 2018

On May 18, 2018, NIRB received a referral from the NPC to screen the Production Increase Proposal. NIRB subsequently determined that the assessment of this proposal would be conducted through a reconsideration of the Terms and Conditions of Project Certificate No. 005 as provided for under Article 12, Section 12.8.2 of the Nunavut Agreement and s. 112 of *NuPPAA*. The Production Increase Proposal proposed three primary modifications to the Mary River Project:

- the installation of a new 380-person accommodations camp at Milne Port.
- the addition of a 15 million litre (ML) diesel fuel tank at Milne Port; and
- an increase in the volume of ore from the current limit of 4.2 million tonnes of ore per annum (Mt/a) to 6 Mt/a that would be transported by truck on the Milne Inlet Tote Road from the Mary River Mine site to Milne Port and subsequently shipped out of Milne Port during the open water season.

Baffinland also requested that NIRB reconsider and amend Conditions 179(a) and 179(b) of Project Certificate No. 005 which limit the total volume of ore that can be transported by truck on the Tote Road and shipped via Milne Port in each calendar year.

##### August 31, 2018

In its Reconsideration Report and Recommendations issued August 31, 2018, NIRB recommended approval of the camp and fuel tank, but recommended the increased shipping and trucking aspects should not be approved to proceed (noting that NIRB’s conclusions on this point in no way predetermines or limits the decision making associated with Phase 2).

##### September 30, 2018

In their decision of September 30, 2018, the Minister of CIRNAC and Minister of Intergovernmental and Northern Affairs and Internal Trade varied the NIRB’s recommendation under section 112(6)(b) of *NUPPAA* to allow a time-limited production increase as follows:

"179(a) Until December 31, 2019, the total volume of ore shipped via Milne Inlet may exceed 4.2 million tonnes per year, but must not exceed 6.0 million tonnes in any calendar year. After December 31, 2019, the maximum total volume of ore shipped via Milne Inlet in a calendar year returns to 4.2 million tonnes per year, unless this condition has been further modified under s. 112 of the Act.

179(b) Until December 31, 2019, the total volume of ore transported by truck on the Milne Inlet Tote Road may exceed 4.2 million tonnes per year, but must not exceed 6.0 million tonnes in any calendar year. After

December 21, 2019, the maximum total volume of ore transported by truck on the Milne Inlet Tote Road in a calendar year returns to 4.2 million tonnes per year, unless this condition has been further modified under s. 112 of the Act."

The Ministers noted in their decision that the QIA has stated that it believes the impacts associated with the production increase are reasonable. Having acknowledged NIRB's concerns and uncertainty about the potential for adverse effects, the Ministers also directed that existing term and condition #10 (air emissions) be revised and that additional new terms and conditions 179(c), 183 and 184 be added to the Project Certificate. With respect to Phase 2, the Ministers noted:

"Finally, the impacts of the production increase need to be more broadly examined during the Phase 2 reconsideration, and it will be important to integrate the experience, knowledge and data gained over the course of the next two production years into that review process."

#### October 30, 2018

Amendment No. 2 to Project Certificate No. 005 was issued on October 30, 2018 by NIRB. The revisions establish mechanisms to audit Baffinland's delivery of benefits in the Region and compliance with environmental management commitments in relation to the Tote Road and marine shipping, and also support verification of monitoring and mitigation efforts related to the potential for effects on marine mammals due to project shipping.

#### **C. Consideration of Cumulative Effects at each stage of the NIRB and NPC Processes**

The issue of cumulative effects has been addressed at each stage of the development of the Mary River Project from the original project approval in 2012 through the ERP approval in May 2014, as well as the current NIRB reconsideration relating to Phase 2. Each application for amendment to the NBRLUP, including the materials filed for Amendment No. 1 (the South Railway amendment), Amendment No. 2 (the Milne Inlet road and marine corridor amendment), and Amendment No. 3 (the North Railway amendment), has addressed the NBRLUP requirements for consideration of cumulative effects.

##### **1. Reference to Cumulative Effects in the Nunavut Agreement, NuPPAA and NBRLUP**

The following is a summary of the provisions in the Nunavut Agreement, the NBRLUP, and NuPPAA which reference cumulative effects.

The NBRLUP does not direct the NPC to consider potential for cumulative effects arising from an individual project proposal. As stated at section 3.12 of the NBRLUP, two articles of the Nunavut Agreement relate to land use planning provisions and the cumulative environmental effects of development, and "*These two articles refer to a process designed to include the assessment of cumulative effects of projects in relation to other development activities.*" Where the NPC has concerns respecting the potential for cumulative effects arising from an individual project proposal, the Nunavut Agreement provides for the NPC to refer projects to NIRB for environmental assessment:

Nunavut Agreement:

“12.3.3 Notwithstanding Section 12.3.2, the NPC may refer a project proposal falling within Schedule 12-1 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.

13.4.4 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 though the application falls within Schedule 12-1.”

Likewise, *NuPPAA* confirms that NIRB is to consider potential cumulative effects in relation to individual projects where the NPC has concerns:

“80 (1) If a project is exempt from screening and the Commission has concerns in respect of any cumulative ecosystemic and socio-economic impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out inside the designated area, or wholly or partly outside the designated area, it must send the project proposal to the Board in order for the Board to conduct a screening of the project.

(2) If a project is exempt from screening and the Commission does not have concerns in respect of the cumulative impacts referred to in subsection (1), it must indicate in the decision that the assessment of the project has been completed and that the proponent may carry out the project, subject to paragraph 74(f) and to obtaining any licence, permit or other authorization required by or under any other Act of Parliament or any territorial law and complying with any other requirements set out in such an Act or law.”

Additionally, Section 103(f) of *NuPPAA* requires NIRB to take into account the potential for cumulative effects during a review:

“(f) the cumulative ecosystemic and socio-economic impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out.”

The NPC has the mandate to receive applications to amend land use plans, to conduct public reviews of proposed amendments (which it has already done in relation to Amendment Nos. 1, 2 and 3) and to make recommendations to the Minister of CIRNAC, the Territorial Government Minister responsible for Renewable Resources and to the NTI to amend land use plans. It does not, however, have the mandate to conduct reviews of individual project proposals.

As stated by the Government of Canada during the NPC's public hearing on Amendment No. 3 on December 4 and 5, 2017, "*Our opportunity here is to answer a bigger question of what land uses are*

*acceptable under the Land Use Plan, and in particular this transportation corridor, not whether this activity can proceed. This is not to imply that the activities being proposed are not important. Rather, the activities need to be subject to review of impacts and regulatory permitting. Activities are to be reviewed by the Nunavut Impact Review Board to assess impact and determine if they are acceptable, and if so, under what conditions and terms they allow in order to mitigate impacts to the environment and enhance socioeconomic opportunities."*

The GN stated in a letter dated December 12, 2017 that, *"the NPC must ensure that it does not infringe upon the Nunavut Impact Review Board's (NIRB) jurisdiction by taking into consideration issues and facts that fall into the impact review process"*. The NPC confirmed this interpretation in its Reasons for Decision on Amendment 3, when it stated, *"The Commission is not doing an environmental assessment itself. That is the NIRB's role. Under the Nunavut "integrated" land use planning and environmental assessment regime, the Commission considers the general types of impacts the proposed amendment would have on a large area of land to see if enough information under Appendix J has been given to make a decision. The Commission is not looking at all of the impacts of a specific project to mitigate them, which is what the NIRB does...The Commission's land use planning is meant to guide development and meet requirements in the Nunavut Agreement and NuPPAA."*

Under sections 61 and 62 of *NuPPAA*, once the NPC makes a recommendation on a plan amendment to the federal Minister, territorial Minister, and NTI, the federal Minister, territorial Minister, and NTI must accept the NPC's recommendation jointly or reject it, in whole or in part, with written reasons. If the NPC's recommendation is rejected by the federal Minister, the territorial Minister, or the NTI, the NPC must, after considering the reasons, undertake once again any measures in relation to the holding of a public review that it considers necessary, make any changes it considers appropriate, and submit a revised proposed amendment to the federal Minister, territorial Minister, and NTI. Once the federal Minister, territorial Minister and NTI are in agreement, the NBRLUP may be modified.

As set out in the following section, the NPC has already previously considered potential for cumulative effects in relation to each of Amendment Nos. 1, 2 and 3.

The NBRLUP states at section 3.5.11 that all parties wishing to develop a transportation and/or communications corridor shall submit to the NPC information which must include an assessment of alternative routes plus the cumulative effects of the preferred route:

*"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."*

Appendix J of the NBRLUP requires *"an assessment of the suitability of the corridor for the inclusion of other possible communication and transportation initiatives (roads, transmission lines, pipelines etc.). This assessment should include: The environmental, social and terrain engineering consequences, and the cumulative impacts of the project, and the environmental and social impact of the project on nearby settlements or on nearby existing and proposed transportation systems."*

For Amendment Nos. 1, 2 and 3, as previously confirmed by the NPC these requirements have already been fulfilled by Baffinland. In addition to other materials provided to the NPC, the Mary River Project FEIS provided a cumulative effects assessment (CEA) that considered the potential for other railways to run at the same time as the South Railway. The potential for cumulative effects arising from potential future developments outside of the requested transportation corridor was considered at the time of the original Mary River NIRB and NPC process, and again during the ERP.

## **2. Cumulative Effects Considered in the Review of the Mary River Project and Amendment No. 1**

In accordance with the Joint Review Process for the Mary River Project (as set out between NIRB and the NPC in September 2009), the Proponent's DEIS submission served as its formal application to the NPC for an amendment to the NBRLUP (the FEIS was subsequently provided to NPC as well).

On February 14, 2012, Baffinland submitted the FEIS for the Mary River Project to NIRB. The Mary River FEIS consisted of ten lengthy volumes of detailed environmental assessment of the mining project, the use of the existing Tote Road between Mary River and Milne Inlet to the North, and the proposed construction of the South Railway. The Mary River FEIS was also provided to the NPC to fulfil the information requirements set out in the NBRLUP, including those relating to cumulative effects.

Volume 9 of the Mary River FEIS included a cumulative effects assessment, which identified the residual effects of the Mary River Project and the potential to interact with the residual effects of other projects or activities that could result in a greater effect to a valued component of the biophysical or socio-economic environments. The South Railway was among the project components included in the CEA.

The cumulative effects included other projects and activities of consideration (projects that were identified as certain, reasonably foreseeable, or induced), such as:

- Baffinland's previous exploration and bulk sampling programs;
- Baffinland's proposed monitoring programs concurrent with the Project;
- past, current and future mineral exploration in the region, by Baffinland and others;
- operating mines (Meadowbank mine in the Kivalliq Region and Raglan Mine in Nunavik) and reasonably foreseeable mines (Roche Bay Iron Ore Project);
- decommissioned mines (former Nanisivik and Polaris mines);
- induced development of other Mary River iron ore deposits;
- marine transport/shipping;
- Nanisivik naval facility;
- air transport;
- military exercises;
- traditional and recreational hunting, fishing and foraging;
- communities;

- tourism and commercial recreation activities;
- Baffinland's potential Separation Lake hydroelectric project; and
- climate change.

Specifically, development of the Mary River Project Deposits No. 2 through 9 was included as an "induced project" that was considered as part of the Mary River FEIS CEA, although these developments did not form part of the Mary River Project Proposal. The potential for future additional Northern rail structures was included in the CEA as potential induced development components:

"Deposits No. 2 and 3 are located within the Mary River watershed upstream of Deposit No. 1. Due to the close proximity to the proposed mining infrastructure of Deposit No. 1, little additional infrastructure would be required. If Deposits No. 2 and 3 were mined concurrent with Deposit No. 1, additional material handling and stockpiling infrastructure would be required at the Mine Site. More trains would move the additional ore to Steensby Port or Milne Port, and more material handling infrastructure (i.e., stockpiles, rail unloading equipment, conveyors and ship loading equipment) would be required at one or both ports, as appropriate. Additional vessel traffic would be needed to ship the additional ore to market.

Drilling at Deposits No. 4 and 5 commenced in 2010. Ore from these deposits, if developed, could be transported to Milne Port over the Milne Inlet Tote Road, which is close by, or could be accessed by an approximately 25-km railway spur from the Mine Site. New mining infrastructure would be required, as would additional material handling and shipping at one or both ports, as described above.

Deposits No. 6 through 9 were discovered in 2010 and have been sampled at surface only. These deposits are located within tens of kilometres (up to 50 km) of either the Mine Site or the Railway."

[emphasis added].

The VECs and key indicators assessed in the FEIS that resulted in residual effects after mitigation were screened for the applicability of cumulative effects, considering the outcome of the impact assessments (Volumes 4 through 8) and the potential projects/activities that could contribute to cumulative effects. As an example, the potential for cumulative effects on terrestrial wildlife were considered for caribou, the key indicator terrestrial wildlife species in the Mary River FEIS:

"The cumulative effects of the Project on terrestrial wildlife were considered for the key indicator wildlife species: caribou. Cumulative effects were considered at the scale of the north Baffin Island caribou herd (Volume 6, Section 5; Volume 6, Figure 6-5.1), that encompasses the known habitats and seasonal use patterns. The two reasonably foreseeable projects with the potential to interact with the Project's

residual effects on caribou include the development of Deposits No. 2 to 9 and the Separation Lake hydroelectric project. The interaction between the Project and other projects will not result in significant cumulative effects on north Baffin Island caribou, primarily because the reasonably foreseeable projects in the range of the herd that could occur at the same time as the Project will result in only an additional 0.006 % loss of habitat.

..

If Deposits No. 2 to 9 are mined, there will be a gradual increase in habitat loss as new road or rail spurs are developed, but the ZOI as a result of sensory disturbances will simply shift (disappear from abandoned sections, move to new sections). As most of the habitat loss is a result of the loss of effectiveness resulting from traffic, then development of spur lines/roads and decommissioning of existing spur lines/roads will balance the overall habitat loss within the development. Presuming an additional 100 km of linear access to the additional deposits, there may be an additional loss of 300 ha (3.0 km<sup>2</sup>) of potential caribou habitat. This is equivalent to 0.002 % of the potential habitat in the 134,308 km<sup>2</sup> north Baffin Island caribou range."

The Mary River FEIS concluded the following with respect to cumulative effects:

"Although cumulative effects have been identified as a possibility for several VCs, particularly caribou and marine mammals, no significant cumulative effects are anticipated to result from the Project. With the exception of marine mammals, most potential cumulative effects identified were the result of potential interactions with projects that may be induced by the Mary River Project (development of Deposits No. 2 to 9 and the Separation Lake hydroelectric project). As noted, if a decision is made to move forward with these projects (contingent on the Mary River Project proceeding), an environmental assessment will be conducted, including a detailed assessment of the potential effects of these activities in conjunction with effects of the Mary River Project. In this capacity, the potential cumulative effects would be reviewed by the appropriate regulatory agencies and any potential significant cumulative effects would be identified and avoided."

As noted above in the chronology related to the Mary River Project, on May 30, 2012, the NPC confirmed in a letter to NIRB that the provisions of sections 3.5.11 (which requires an assessment of alternative routes and the cumulative effects of the preferred route) and 3.5.12 (which requires a public review of the proposed corridor to determine if it adequately meets the guidelines in Appendices J and K of the NBRLUP) of the NBRLUP related to the Mary River Project had been satisfied. The NPC also stated that it would decide whether to request that the Minister amend the NBRLUP once the project certificate showing the final location of the transportation corridor was issued.

As also noted above in the chronology, in September 2012, NIRB released its final hearing report and recommended to the Minister of AANDC that the Mary River Project proceed. Following the positive determination of December 3, 2012 of the Ministers of AANDC and the Ministers of Environment (Canada), DFO, Natural Resources Canada, and Transport Canada, on December 28, 2012, NIRB issued Project Certificate No. 005 for the Mary River Project. On December 9, 2013 the NPC issued its recommendation for Amendment No. 1 to the NBRLUP.

### **3. Cumulative Effects Considered in the Review of the Mary River Project and Amendment No. 2**

The ERP Addendum (June 20, 2013), the application to the NPC to determine conformity with the NBRLUP (July 9, 2013), and Baffinland's written submission on the conformity determination relating to the ERP (August 2, 2013) all addressed the issue of cumulative effects. As set out in the ERP Addendum, the conclusions about cumulative effects as assessed in the Mary River FEIS did not change. Specifically, there was no change in the outcome of the assessment of cumulative effects on caribou or other key VECs, taking into account the proposed increase in traffic along the Milne Inlet Road.

As noted above in the chronology, on March 17, 2014, after a detailed review of the ERP proposal, including a public hearing in Pond Inlet in January 2014, the NIRB issued its report and recommended that the ERP proposal should be allowed to proceed. The NIRB Public Hearing Report Mary River Project: Early Revenue Phase Proposal dated March 2014 includes the NIRB's determinations on cumulative effects. The Public Hearing Report notes that in assessing the cumulative effects of the Early Revenue Phase Proposal, Baffinland updated the temporal boundaries of the cumulative effects assessment to reflect that the ERP, if it were to go ahead, would add approximately four to five years of mining, transporting and shipping to the original 21 year operating phase of the mine as assessed by NIRB under the original Mary River Project timelines. NIRB noted that Baffinland reviewed whether the transportation of ore by trucks via the Tote Road would result in increased cumulative effects on air quality and on terrestrial wildlife including caribou and concluded that no significant cumulative effects would result from this activity.

In its recommended changes to the Project Certificate, NIRB required Baffinland (via condition 58 of the Project Certificate) to include a specific review section in its annual report on the potential for cumulative effects arising from the railway:

"58: Within its annual report to the NIRB, the Proponent shall incorporate a review section which includes: ... (d) A demonstration and description of how the monitoring results, including the railway, road traffic, air traffic and dustfall contribute to cumulative effects of the project".

After the Minister approved NIRB's recommendations on April 28, 2014, the NIRB issued Amendment No. 1 to Project Certificate No. 005 on May 28, 2014.

The NPC's Reasons for Decision on Amendment No. 2 of April 2, 2014 also included a determination by the NPC on cumulative effects:

"As Baffinland has explained in its evidence and submissions to the NPC, the Milne Inlet Tote Road and proposed marine shipping route have been used, and continue to be used for transportation. The NPC is

satisfied on the basis of this evidence that Baffinland has sufficiently assessed the environmental, social and terrain engineering consequences, and the cumulative impacts of the project, and the environmental and social impact of the project on nearby settlements or on nearby existing and proposed transportation systems.”

As noted above, the Reasons for Decision described the public review of the amendment request, and confirmed that the information requirements of Appendices J and K of the NBRLUP had been met. Amendment No. 2 was subsequently issued and came into effect on April 28, 2014.

#### **4. Cumulative Effects Considered in the Review of Amendment No. 3**

Baffinland initially proposed Phase 2 of the Mary River Project in 2014, through which Baffinland seeks to increase the volume of iron ore shipped to Milne Inlet. The initial Phase 2 Project Proposal was subject to various NIRB, NPC and Ministerial processes between 2014 and 2017 and the Phase 2 Project Proposal was significantly revised over that time period. As set out in the Phase 2 Project Proposal, Baffinland ultimately determined that a railway is needed to transport ore to Milne Inlet and proposes to revise the Mary River Project as currently approved to also include the North Railway. On February 3, 2017, Baffinland resubmitted its Phase 2 Project Proposal to the NPC for a land use conformity determination, as directed by NIRB.

The previous NIRB assessments of Mary River and the ERP considered all facilities at the Mine Site, Milne Port, Steensby Port and the South Railway. The NPC also considered these facilities as relevant to the NBRLUP (it is noted that certain project components, including the balance of the South Railway beyond the 35 km, were outside of the NBRLUP area). With Phase 2, the construction and operation of the North Railway, the expansion of the Milne Port PDA, and construction of the ore dock No. 2 are the added components.

On March 6, 2017, the NPC wrote to Baffinland and stated that the proposed North Railway would constitute the development of a transportation corridor. Accordingly, the NPC's requested that Baffinland provide additional information under the NBRLUP.

On March 17, 2017, Baffinland submitted its proposal for an amendment to the NBRLUP in relation to the Mary River Phase 2 (Amendment No. 3). Specifically, Baffinland proposed an amendment to clarify that rail, as well as roads, could be used as a mode of transportation in the existing transportation corridor established in Amendment No. 2. In its response to the NPC request for additional information, Baffinland stated that

“[n]o new route is proposed for the transportation corridor and therefore no change to the cumulative effects of the route will be realized.”

Baffinland went on to state that the preferred railway route will follow along the existing Tote Road and will therefore not result in the creation of a new linear development route in the area or represent an additional linear barrier to traditional land users and wildlife. Further, Baffinland stated that the development and use of the North Railway will reduce and ultimately replace the use of haul trucks to transport iron ore, reducing the likelihood of potential disturbances to wildlife in the area. The

information provided by Baffinland on cumulative effects was accepted as satisfactory by NPC, and no additional information on the topic of cumulative effects was requested.

The NPC subsequently carried out a review of the proposed amendment including public hearings which took place in November 2017.

On March 18, 2018, the NPC released its Public Hearing Report, in which the NPC confirmed that the requirements of Appendix J and K were met and recommended that Amendment No. 3 be approved by the designated signatories for inclusion in the NBRLUP. In its Public Hearing Report, the NPC acknowledged that the ERP added certain facilities and activities to the Mary River Project as originally approved:

"Baffinland got a positive conformity determination from the Commission for the Mary River Project and got a project certificate from the Nunavut Impact Review Board (NIRB) in December 2012. Then Baffinland wanted to add new works and activities to transport ore on the Milne Inlet Tote Road, build a permanent ore dock at Milne Inlet, and ship ore overseas during the ice-free season (the Early Revenue Phase Project). The NIRB sent the Early Revenue Phase Project back to the Commission."

The NPC stated that the consideration of caribou protection measures was outside the scope of their public review and noted that it is for the NIRB to deal with project impacts. The NPC recommended that the NIRB review the proposed North Railway and that any potential impacts should be considered together with the impacts of Baffinland's currently approved use of the road.

As noted in the above chronology, the Minister of CIRNAC (April 10, 2018), the Minister of Environment (GN) (April 16, 2018), and the President of the NTI (May 8, 2018) all approved Amendment No. 3, which came into effect on May 8, 2018. Amendment No. 3 clarified that the terrestrial component of the transportation corridor generally described in Amendment No. 2 included railways.

We have not provided electronic copies of the following materials as they are part of the current and ongoing NIRB review and are not relevant to the completion of the South Railway amendment.

On October 12, 2018 the NIRB initiated the public technical review of the Phase 2 Addendum submitted by Baffinland for the Phase 2 Development project proposal by asking parties to submit IRs by November 23, 2018. Following submission of the IRs, NIRB forwarded the submissions to Baffinland with guidance on responding to IRs from parties. The IR response package was received from Baffinland on December 18, 2018. The 60 day NIRB technical review period commenced on December 21, 2018, and the NIRB and NWB Joint Technical Meeting is currently scheduled for March 12 to 15, 2019. The NIRB public hearing is currently scheduled for May 7 to 11, 2019 in Pond Inlet. Dates have not yet been set for the NWB public hearing.

The Phase 2 Addendum includes a detailed Cumulative and Transboundary Effects Assessment. As noted above, the CEA was originally presented in Volume 9, Section 1 of the FEIS (Baffinland 2012). As with the ERP Addendum, the original FEIS CEA was revisited in the Phase 2 Addendum by updating the list of active and reasonably foreseeable projects and by considering the temporal boundaries of the Phase 2 Proposal. While the PDA boundaries will grow with the Phase 2 Proposal (as compared with the

PDA for the Mary River Project and the ERP), the overall spatial boundaries of the previous assessments remain largely unchanged. As such, the previous assessment of cumulative effects of components of the Project that are unaffected by the Phase 2 Proposal (i.e., Steensby Port and the south shipping route) remain unchanged from the previous cumulative effects assessment presented in the FEIS. Project components in the assessment of cumulative effects include all elements of the Project located within the NSA, as well as socio-economic interactions such as employment, training, benefits and royalties that will occur outside of the NSA but within Canada.

An updated inventory of projects and activities considered potentially relevant to the CEA is presented in TSD 27 Cumulative and Transboundary Effects Assessment. The projects and activities that are being carried forward in the CEA are described in sections 1.3.3 through 1.3.5. The future development scenario considered in this CEA is a production rate of up to 60 Mt/a, from Deposits No. 1 through 5 over an additional 20 years, i.e., the operation phase changing from 2035 to 2055. Of the 60 Mt/a of ore mined, 36 Mt/a would be transported over the South Railway to be shipped year-round from Steensby Port, as contemplated in the Approved Project CEA, with the remaining 24 Mt/a of ore transported over the North Railway to Milne Port and shipping occurring over an approximate 8.5-month shipping season (July 1 to March 15). It should be noted that the scope of this future development scenario's activities greatly exceed – additional 12 Mt/a through the Northern Transportation Corridor and additional 18 Mt/a through the Southern Transportation Corridor – what would have been specifically considered in a cumulative effects assessment to support Amendment No. 1 to the NBRLUP.

The Phase 2 Addendum CEA considers the following topics and concludes that the effect of the Project, taking into account both the North and South Railway as well as other past, present and reasonably foreseeable projects in the area, is likely to be not significant:

- meteorology and climate including climate change;
- air quality;
- vegetation;
- migratory birds and habitat;
- terrestrial wildlife and habitat;
- water quality and quantity;
- surface water quality;
- freshwater fish, fish habitat and biota;
- marine ice water and sediment quality;
- marine habitat and biota;
- marine mammals; and
- valued socioeconomic components.

The current and ongoing reconsideration of the Phase 2 proposal by NIRB will include consideration of cumulative effects, including the cumulative effects of proposed operations on the transportation corridors.

#### **D. Summary**

The above chronology and enclosed materials illustrate that:

- The Mary River Project (which has always included the South Railway) was thoroughly and publicly reviewed by the NPC and NIRB, culminating in project approval and a recommendation by the NPC that the NBRLUP be amended to include the South Railway. Baffinland has been transparent in all of its subsequent applications and in participation in related public processes that it intends to proceed with the South Railway and that the ERP and Phase 2 are not alternatives to the approved Mary River Project. Mary River, the ERP and Phase 2 all include the South Railway as a project component.
- The requirements to include information on potential for cumulative effects under section 3.5.11 of the NBRLUP was met by Baffinland in relation to its applications for each of Amendment Nos. 1, 2 and 3 and the NPC accepted those applications as meeting the requirements of Appendices J and K.
- The potential for the South Railway to run at the same time as other potential future projects was included in the CEA for the Mary River Project and the ERP as set out in the FEIS and FEIS Addendum provided to the NPC and NIRB during the regulatory processes.
- The NPC has already made its determination that the South Railway corridor should be added to the NBRLUP, in December 2013. The rejections by the Government of Canada and the Government of Nunavut of the original version of Amendment No. 1 were based on the form of the proposed amendment and did not challenge the NPC's determination and recommendation that the amendment should proceed.
- The issue of cumulative effects has been expressly addressed at each stage of the development of the Mary River Project from the original project approval in 2012 through the ERP approval in May 2014, as well as the current NIRB reconsideration relating to Phase 2. Each application for amendment to the NBRLUP, including the application for Amendment No. 1 (the South Railway amendment), Amendment No. 2 (the Milne Inlet road and marine corridor amendment), and Amendment No. 3 (the North Railway amendment), has addressed the NBRLUP requirements for consideration of cumulative effects.
- Potential for cumulative effects of the South Railway and the North Railway are currently being considered in detail by NIRB in its current Mary River Phase 2 reconsideration process. Baffinland will not be permitted to proceed with Phase 2 until that process is complete. The issues raised in the NTI's letter of September 20, 2018 are being thoroughly considered by NIRB within the regulatory process established by the Nunavut Agreement and referenced in the NBRLUP. Baffinland emphasizes that this information is not necessary or appropriate for the NPC or the signatories to consider in

relation to the issuance of Amendment No. 1. As determined previously by the NPC, the information requirements of Appendices J and K of the NBRLUP were already previously met in relation to Amendment No. 1.

To the extent the NPC undertakes any public process in relation to Amendment No. 1 (which Baffinland does not agree is appropriate in the circumstances), Baffinland suggests that the appropriate next steps are for the NPC to consider Baffinland's enclosed suggested revised wording on Amendment No. 1 (which is based on the wording of Amendment No. 3), make any additional changes that the NPC considers appropriate, and circulate the draft wording of Amendment No. 1 for review and comment to the designated signatories.