



May 24, 2019

Brian Aglukark
Nunavut Planning Commission
P.O. Box 419
Arviat, NU X0C 0E0
aglukark@nunavut.ca

Re: North Baffin Regional Land Use Plan, Revised Proposed Amendment No. 1

Dear Mr. Aglukark:

Baffinland is writing to provide comments in response to the Nunavut Planning Commission's (**NPC**) March 22, 2019 request for comments on the revised proposed Amendment No. 1 to the North Baffin Regional Land Use Plan (the **Plan**). Please find Baffinland's comments below.

Overview of Baffinland's Position

A public hearing is not required for the NPC to consider and approve the revised proposed Amendment No. 1. The NPC has already found that the proposed transportation corridor between the Mary River Mine and Steensby Port (the **Transportation Corridor**) complies with the Plan and confirmed this when it recommended that the Government of Nunavut (**GN**) and the Government of Canada (**Canada**) approve Amendment No. 1.

NPC determined the Transportation Corridor to be appropriate and recommended Amendment No. 1 in the context of an extensive joint review by the NPC and the Nunavut Impact Review Board (**NIRB**) of the Mary River Project (the **Project**) as a whole. That review included consideration of cumulative effects, and included the Transportation Corridor. The proposed southern railway and other related transportation corridors are contemplated in the 2012 Project Certificate and have already been approved by NIRB.

Cumulative effects of the Project have been and will be assessed by the NIRB. In addition to the 2012 assessment, cumulative effects are being considered by NIRB as part of the ongoing impact assessment of Phase 2 of the Project. It would be inappropriate and inefficient to duplicate that process through another public hearing on the same issues. The changes to proposed Amendment No. 1 suggested by Canada are minor, and Baffinland accepts them. These minor changes do not require a further public hearing, especially given the Transportation Corridor has already been found to comply with the Plan. The balance of Canada and the GN's 2014 concerns have been satisfied.

The Transportation Corridor Complies With the Plan

Whether or not the Transportation Corridor as a whole complies with the Plan is no longer at issue. As discussed below, that determination was made between 2012 and 2013. At issue is whether to accept the amendments suggested by Canada and the GN in 2014 and in their May, 2019 submissions. The NPC has already made a determination that the Transportation Corridor is appropriate from a planning perspective, following a public review. The NPC determined that it had enough information to make that decision. In particular, 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. [emphasis added]

Then, 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. [emphasis added]

NPC subsequently recommended that both Canada and the GN approve the amendment to permit the Transportation Corridor. It is not accurate, therefore, to suggest that Baffinland has not complied with ss. 3.5.11 and 3.5.12 of the Plan.

Having received the comments of Canada and the GN, NPC was obliged by the Nunavut Agreement to consider and resubmit the amendments in light of those comments. Section 11.5.7 of the Nunavut Agreement which creates this obligation provides as follows:

The NPC shall reconsider the plan in light of written reasons and shall resubmit the plan to the Ministers for final consideration.

The NPC did not meet its obligation to consider and resubmit the amendment over the intervening four years. In 2014, Canada suggested receiving further comment from appropriate stakeholders on Canada's recommendations. Canada did not suggest that a new public hearing on the entire Amendment was either necessary or appropriate, and says a hearing is not necessary now. To hold another hearing, after NPC's delay in complying with the above obligations, would be unfair to Baffinland, unjust, and would cause further delays to no purpose.

As discussed below, a further hearing is unnecessary because (i) the Governments' changes would have no material planning impact and (ii) because the cumulative effects of the Transportation Corridor, along with other corridors, have been and are being considered by NIRB. Indeed, the proposed southern railway was also included as a project component in the NPC's positive conformity determinations issued in relation to Amendment Nos. 2 and 3.

While the introduction of the *Nunavut Planning and Project Assessment Act* in the intervening years arguably allows for a public hearing to be held, holding a hearing is not mandatory and would compound the procedural error of not resubmitting the amendments for approval on a timely basis. That fact, together with the notion that fairness dictates that the process the parties were subject to when the amendment ought to have been reconsidered (a process that did not contemplate a further hearing) should also be applied now, supports the position that a hearing would not be appropriate in these circumstances.

Proposed Amendments are Minor

The changes to Amendment No. 1 are purely administrative and will not substantively alter the nature of the Transportation Corridor that has been determined appropriate and recommended for approval. Baffinland agrees with Canada that the changes proposed are not sufficiently significant to merit the delay and expense of a public hearing. The changes proposed by Canada and the GN are in essence:

- I. adjustments that ensure that the Transportation Corridor is not exclusively for the use of the Project (using language already approved in Amendment No. 3);
- II. clarification of the location of the Transportation Corridor on a map; and
- III. minor wording changes for consistency and clarity.

These alterations could and should have been made in 2014 by the NPC. Incorporating them now should not entail re-opening the approval process for the corridor itself or create a quasi-appeal of the NPC's 2013 recommendation related to Amendment No. 1. Allowing an administrative matter outside of the proponent's control to be used to call into question determinations made by the NPC years ago may have broader implications on the perception of the effectiveness and integrity of the permitting process.

Cumulative Effects Have Been and Are Being Considered

Nunavut Tunngavik Inc.'s (**NTI**) and Qikiqtani Inuit Association's (**QIA**) primary concern is that cumulative effects of the Transportation Corridor have not been considered and, as such, a further public hearing is necessary. That concern is unfounded for two reasons.

First, cumulative effects have already been considered. The NPC confirmed in 2012 that Baffinland had complied with the requirements of s. 3.5.11 of the Plan, which includes assessment of cumulative effects.

The NPC recommended Amendment No. 1 in the context of an extensive, multi-year, joint review of the Project as a whole by the NPC and NIRB. That review included consideration of the cumulative effects of the Project, including the Transportation Corridor. NIRB issued the Project Certificate for the Project on December 28, 2012. Baffinland provided the NPC and NIRB with maps showing the proposed alignment of the railway corridor. These were filed as Exhibit #3 in the Final Hearing, and are referenced in Section 2.0 of the Project Certificate.

Further, and as noted above, the southern railway is not a new concept to the NPC; it was a project component in the NPC's positive conformity determinations issued in relation to Amendment Nos. 2 and 3. Baffinland met the requirement to include information on cumulative effects for the purposes of those conformity determinations, and the NPC accepted those applications as meeting the requirements of Appendices J and K of the Plan.

Second, the cumulative effects of the Project, including the Transportation Corridor, are being considered by NIRB as it reviews Phase 2 of the Project. QIA acknowledges this at page 2 of its letter, where it notes that a "key component of the Phase 2 impact assessment is cumulative effects, including consideration of the proposed North Railway to Milne Inlet and South Railway to Steensby Inlet." In other words, QIA's concerns are already being addressed through the NIRB process. To the extent NTI is concerned about the information provided with respect to cumulative effects, it may refer to Baffinland's submissions in the NIRB impact assessment, and may participate in the Phase 2 review by the NIRB. Baffinland will not be able to proceed with Phase 2 until the NIRB process is complete.

Indeed, NIRB is required to consider these cumulative effects pursuant to s. 103(1) of the *Nunavut Planning and Project Assessment Act*. As such, any cumulative effects that may have arisen since the 2012 review will be captured and considered in that process. The process is comprehensive with respect to cumulative effects – they were considered in 2012 (as the NPC acknowledged) and they are being considered now. Cumulative effects of the Project have been and will be considered in the appropriate regulatory process – that is, the NIRB project review. Given the time that has elapsed and the NPC's and NIRB's previous determinations, it would be inappropriate for the NPC to commence a parallel review process to consider the very same issues.

Impact of a Public Hearing

Holding a redundant public hearing to address administrative changes would result in no benefit for the signatories, Nunavummiut, or the environment. It would, however, be detrimental to Baffinland. Baffinland would be forced to expend significant additional time and resources providing the NPC with information that it has already provided to NIRB, so that the NPC could consider the same issues that NIRB has considered and will consider. In addition, other parties will be required to expend additional resources and efforts to prepare for and attend a public hearing. All this in the context of a Plan amendment the NPC had already determined to be appropriate, recommended to the Minister for approval and that should have been finalized four years ago.

Baffinland agrees with the GN that "efficiency in the land use plan amendment process is integral to maintaining certainty and confidence in the territory's regulatory approvals regime." It is important that this matter be concluded expeditiously, so that Baffinland may continue to move the Project forward. Doing so is consistent with the Plan's recognition at p. 6 that "a significant portion of the North Baffin private-sector economy is based on some use of the land and natural resources" and that mineral exploration is one the most important elements of this economy. This is why the drafters of the Plan noted on the very same page that it "must therefore take into account the economic impacts of its recommendations and actions." The Plan similarly refers, on p. 26, to "the need for economic development within the region, particularly more wage employment, to meet the needs of a young and growing population".

Baffinland notes that, despite consulting with a variety of communities, including the mayors of affected hamlets and representatives of affected Hunters and Trappers associations, only QIA has suggested that another public hearing is necessary. Given the low level of interest in a public hearing, Baffinland suggests that a more efficient and fair option is for Baffinland to address QIA's and NTI's particularized concerns in the context of the NIRB impact assessment, rather than in a duplicative process.

Conclusion

This amendment has already been subject to excessive delay. Further delay and expense to hold another public hearing would be unwarranted. Holding a public hearing would be unfair and unjust: given the fact the NPC has already made a positive determination about the appropriateness of the Transportation Corridor and recommended it to the Minister for approval, given the amount of time that has passed, and given administrative nature of the modifications to the revised proposed Amendment No. 1 at issue. Baffinland agrees with the GN that the NPC should complete its remaining obligations without further delay.

Sincerely,

A handwritten signature in black ink that reads "Megan Lord-Hoyle". The script is cursive and fluid.

Megan Lord-Hoyle

Vice-President, Sustainable Development
Baffinland Iron Mines

Cc:

Grant Goddard, Baffinland Iron Mines

Lou Kamermans, Baffinland Iron Mines