



NUNAVUT PLANNING COMMISSION

NORTH BAFFIN REGIONAL LAND USE PLAN AMENDMENT APPLICATION –

REPORT ON PUBLIC REVIEW

APPLICANT	Baffinland Iron Mines Corporation
PROJECT:	Amendment Application relating to Mary River Project
FILE NO(S):	Amendment #3
PLANNING REGION(S):	Qikiqtani (North Baffin)
APPLICABLE LAND USE PLAN(S)	North Baffin Regional Land Use Plan (NBRLUP)
DATE OF REPORT:	March 18, 2018
SUMMARY OF REPORT:	The Commission recommends the revised amendment, attached as Schedule "B" be approved for inclusion in the NBRLUP.

NOTE

Relevant documents and correspondence are available online at:

<http://lupit.nunavut.ca/portal/registry.php?public=docs&g=11&c=1026>

<u>Table of Contents</u>	
Background.....	3
Mandate of the Nunavut Planning Commission	9
Applicable Land Use Plans.....	13
Applicable Rules, Internal Procedures, and Broad Planning Policies, Objectives and Goals	17
Issues to Determine	21
Summary of Facts & Analysis By Issue	22
Submissions on Wording for a Revised Amendment.....	61
Schedule “A”: List of Relevant Documents and Correspondence	66
Schedule “B”: Recommended Amendment	70
Schedule “C”: Summary of Recommendations	79

BACKGROUND

1. This is the Nunavut Planning Commission's (**NPC** or the **Commission**) report on a public review of an application to amend a land use plan.
2. The Milne Inlet Tote Road has been there since the 1960s,¹ and is in the Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen In Right of Canada, Signed May 25, 1993, as amended (the **Nunavut Agreement**).
3. Baffinland Iron Mines Corporation (**Baffinland**) is a mining company that operates the Mary River Project on Inuit Owned Lands.² The Mary River Project is the only operating mining project in Nunavut's Qikiqtani region.³
4. The Executive Director's preliminary report dated August 28, 2017 gave a brief history of the Mary River Project.
5. 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.
6. Baffinland said the Early Revenue Phase Project did not "develop" a corridor. The Commission asked Baffinland to make an application to amend the NBRLUP under section 3.5.11 and Baffinland did (the **ERP Amendment**). Baffinland maintained that it was using the Milne Inlet Tote Road and not "developing" a corridor, and specifically advised the Commission that the amendment to the NBRLUP did not propose any icebreaking.. One participant said Baffinland would not "develop" a corridor because the Milne Inlet Tote Road was a pre-existing road, and that shipping already occurred in the marine environment.⁴

¹ World Wildlife Fund Canada, Written Submissions October 2, 2017, <NPC Filename: 2017-10-02 - WWF Submission re NBRLUP Amendment #3 [WWF, Written Submissions (October 2, 2017)]>

² Baffinland Project Proposal Mary River Phase 2 Expansion Project Revised October 2014 Submission February 3, 2017, <NPC Filename: 2017-02-03 - NBRLUP Amend#3- Mary Riv.pdf>

³ Nunavut Tunngavik Inc. & Qikiqtani Inuit Association, Letter to NPC & INAC (July 20, 2017), NPC filename: 2017-07-20 - NBRLUP Amend#3-Mary River Phase II Expansion - NTI&QIA Ltr to NPC & INAC re BIMC Amendment Proposal ENG-INUK

⁴ See NPC Reasons for Decision from Public Review: NBRLUP Amendment Application (April 2 2014) at ¶ 44
Filename: DFO NU 07 0050 BIMC ERPP APR 14 AMDCS.pdf>

7. On April 28, 2014, the Government of Canada (**GoC**) and Government of Nunavut (**GN**) amended the NBRLUP to include the Milne Inlet Tote Road and Marine Transportation Corridor as Appendix Q for Baffinland's Early Revenue Phase Project.⁵ The Commission had also recommended another amendment for the NBRLUP that would have been Appendix P that was rejected. The approved Appendix Q says the lands in section 2.2.1 of that Appendix and in Schedule "A" of Appendix Q "may be developed for the purpose of a transportation corridor in accordance with the following provisions". These provisions apply:

- The transportation corridor, for the purposes of this Amendment, contains two components, one terrestrial and the other marine. Together they include the Milne Inlet Tote Road, Milne Port and the marine shipping route from the Milne Port North through Milne Inlet and then East through Eclipse Sound to Baffin Bay to the eastern extent of the land-fast ice zone as illustrated in Schedule A to this Amendment and may also include any infrastructure, support facilities, and any other related systems associated with the safe operation of the transportation corridor, and as outlined in the Early Revenue Phase Addendum to Final Environmental Impact Statement.
- The terrestrial component, encompassing the Milne Inlet Tote Road, includes a fixed smooth or paved surface, made for travelling by motor vehicle or carriage throughout the year and may include, bridges, culverts, tunnels, crossings, signals, telecommunication facilities, yards, terminals and service and storage facilities associated with a road as well as any other infrastructure required to ensure the safe operation and movement of motor vehicles or carriages.
- The marine component, encompassing the shipping corridor, includes a marine travel route used by ship traffic to navigate and may also include marine infrastructure, including aids to navigation, fixed docks, floating docks, piers, ports, loading and unloading facilities, storage facilities, refueling facilities and any other facilities or infrastructure which is required for operating the port or for ensuring the safe passage of vessels.
- A transportation corridor, for the purposes of the NBRLUP, may be used by any person for the purpose of transportation, including for the purpose of servicing the operation of the Mary River Mine Site and transporting iron ore from the Mary River Mine Site. Any industrial activity within the corridor shall be in accordance with the terms and conditions of any project certificates,

⁵ QIA, Written Submissions (November 17, 2017) at ¶ 3 <NPC Filename: 2017-11-17 - QIA Submission re NBRLUP Amendment #3.pdf> [**QIA, Written Submissions (November 17, 2017)**]

permits, licences, or authorizations. Any incidental activities or regular maintenance associated with the upkeep or continued operation of the transportation corridor to ensure the safe operation of transportation-related infrastructure and activities will not require further review or amendment.

- Nothing in this Amendment will prevent or prohibit the public right of access for the purpose of transportation, as described in Schedule 21-2 of the Nunavut Land Claims Agreement (NLCA), on the Inuit Owned Lands described in that Schedule.
 - Nothing in this Amendment will prevent or prohibit the use of the lands as described in this Amendment and as shown on Schedule "A" for the purpose of wildlife harvesting and/or traditional activities carried out by residents of the Region.
 - Traditional activities may include hunting, fishing, camping and any other activity considered by residents to be important in maintaining a traditional lifestyle.
 - Nothing the NBRLUP will prevent or prohibit navigation in the marine environment in accordance with existing international law and conventions, federal laws and regulations applicable to shipping and navigation, and the NLCA.
 - No new prohibitions are contained or proposed in this Amendment.
8. On October 29, 2014, Baffinland submitted a project for a conformity determination for Phase 2 of the Mary River project (**Mary River Phase 2**). It applied to increase the amount of ore that can be trucked and shipped through Milne Inlet Port, have 150 ship transits and trans-shipping in the ice-free season, and to do ice management and icebreaking until March.⁶ After considering the recommendation of staff and the response by Baffinland, on April 8, 2015 the Commission gave a Negative Conformity Determination (the **Negative Determination**) because icebreaking did not conform with sections 3.2.1 or 3.3.1 of the NBRLUP, and Appendix Q said the rights and values protected by sections 3.2.1 and 3.3.1 were not affected by the establishment of the transportation corridor.⁷ The Negative Determination said:

⁶ NPC Conformity Officer, *Negative Conformity Determination Recommendation Re: Mary River Project Phase 2*, NWB File: 2AM MRY1325; DFO File: NU-07-HCAA-CA7-0050; NIRB File: 08MN053 (March 5, 2015).

⁷ Nunavut Planning Commission, *Conformity Determination by the Commissioners, Re: Mary River Project Phase 2*, NWB File: 2AM MRY1325; DFO File: NU-07-HCAA-CA7-0050; NIRB File: 08MN053 (April 8, 2015), cited in QIA, *Written Submissions* (November 17, 2017) at ¶ 12.

“... the Commission does not interpret Appendix Q to say that navigation **through ice** conforms with the NBRLUP where it conflicts with conformity requirements 3.2.1 and 3.3.1 that protect the same values expressly preserved by Appendix Q itself.”⁸

[emphasis in original]

9. Baffinland applied to the federal minister for an exemption and it was granted on July 13, 2015. The former minister sent the Mary River Phase 2 to the NIRB for review. In February 2016, Baffinland decided that a railway was needed to transport ore to Milne Inlet instead of a road, changed Mary River Phase 2 to include the development of a railway from Mary River to Milne Inlet, and the NIRB referred the project back to NPC in December 2016.
10. In January 2017, the Commission’s conformity officers gave Baffinland a positive conformity determination for a proposal to break ice, once, in March 2017 for resupply of the Mary River Project.⁹ Baffinland did not go ahead with icebreaking and told the Commission it was because of community concerns.
11. Baffinland sent the Commission a project proposal (the **Mary River Phase 2 Expansion Project**) on February 3, 2017 for a conformity review. The Mary River Phase 2 Expansion Project says that “to establish an economically sustainable operation” Baffinland has to increase production using the Milne Inlet Tote Road with a lower cost railway to Milne Port. The Popular Summary at section 1 says the project 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.

⁸ *Ibid.* ¶. 24.

⁹ NPC File No. 148423.

- 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.”¹⁰
12. On March 6, 2017, the Commission told Baffinland the activities in the project had not been previously reviewed and asked for information under section 3.5.11 of the NBRLUP. On March 17, 2017 Baffinland filed an application to amend the NBRLUP for a rail line from Mary River to Milne Inlet, infrastructure at the Milne Inlet Port Site, and icebreaking every year from December to February (the “**Baffinland Phase 2 Amendment Application**”).
 13. On August 14, 2017, the GoC, the GN, and QIA announced an agreement on the Lancaster Sound national marine conservation area. After it is established it will be exempt from the Commission’s BPPOG and applicable land use plans in accordance with section 70 of the *Nunavut Planning and Project Assessment Act (NuPPAA)*. However the Commission didn’t get any new submissions about this, so won’t comment on the issue further.

Public Review of Baffinland Phase 2 Amendment Application

14. On August 30, 2017, the Commission started a written public review under section 3.5.12 of the Plan. The Commission deferred a decision to hold a public hearing until it had more information. Notices were posted in communities of Pond Inlet, Clyde River, Arctic Bay, Resolute Bay, and Grise Fjord, in collaboration with the local hamlets, as well as the QIA staff in the communities.¹¹
15. Participants filed written submissions on or before October 2, 2017, including QIA and the Municipality of Pond Inlet who requested a public hearing in Pond Inlet. One interested person, WWF Canada (**WWF**), said a “public hearing is essential to the process whether or not the proposed NBRLUP Amendment should be allowed” because “the persons most deeply affected by the proposed amendment, residents of Pond Inlet and surrounding communities and the hunters and land users throughout the region, deserve ample and appropriate opportunity to participate in the NPC’s process, especially with traditional oral commenting as would be available during an in-person hearing”.¹² Others like the GoC said that a public hearing was not required because it “may duplicate aspects of the

¹⁰ Baffinland Project Proposal Mary River Phase 2 Expansion Project Revised October 2014 Submission February 3, 2017, <NPC Filename: 2017-02-03 - NBRLUP Amend#3- Mary Riv.pdf> at p. 5

¹¹ Nunavut Planning Commission, Transcript of Pond Inlet Public Hearing December 2017 p. 9.

¹² WWF, Written Submissions (October 2 2017), p. 5

previous North Baffin Regional Land Use Plan Amendment 2 public hearing and the Nunavut Impact Review Board's future impact assessment functions".¹³

16. On October 6, 2017 the Commissioners reviewed written submissions and decided a public oral hearing should be held in Pond Inlet. The Commission issued a notice that an in-person public hearing would be held in Pond Inlet on December 5-6, 2017, and released a draft agenda for the hearing.
17. On October 23, 2017 the Commission sent all registered participants a letter enclosing a proposed list of issues for comment.
18. The original Baffinland Phase 2 Amendment Application would have added winter sealifts to Appendix Q,¹⁴ but on October 24, 2017 it withdrew winter sealifts because of Pond Inlet's concerns.¹⁵ The remaining amendment would change Appendix Q to let Baffinland build a railway in the corridor running North from the Mary River mine site to Milne Inlet, and a second ore dock and associated infrastructure for loading, unloading, maintenance and crushing at Milne Inlet Port.¹⁶
19. On October 26, 2017, NIRB asked for comments on the Baffinland Phase 2 Amendment Application as part of its public review under section 3.5.12 of the NBRLUP. QIA also asked that Baffinland provide additional documents including "any document or record of information pertaining to all community involvement events and activities related to the Phase 2 Proposal, and/or the proposal for a 3rd amendment to the NBRLUP", and "all technical drawings, data, reports, studies, analysis and information pertaining to the proposed railway use within the territorial component of the existing transportation corridor."
20. On October 27, 2017, after getting comments from some participants on the draft list of issues and after Baffinland abandoned winter sea lifts of freight, the Commission released a final list of issues and agenda for the public hearing.

¹³ Indigenous and Northern Affairs, representing participating federal departments of the GoC, Written Submissions (October 2, 2017), at p. 3 <NPC Filename: 2017-10-02 - GoC Submission re NBRLUP Amendment #3.pdf>.[GoC, **Written Submissions (October 2, 2017)**]

¹⁴ Baffinland, Letter to NPC Re: Proposed Amendment to North Baffin Regional Land Use Plan (May 9, 2017), at s. 1.2, p. 13, <NPC Filename: 2017-05-09 -NBRLUP Amend#3-Mary River Phase II Expansion- BIMC ltr to NPC Re Proposed amendment to the NBRLUP.pdf>

¹⁵ Baffinland, Letter to NPC Re: Proposal for Amendment to the NBRLUP in relation to the Mary River Phase 2 Expansion Project (NPC File # 148420) (October 24, 2017), <NPC Filename: 2017-10-24 - NBRLUP Amend#3- Mary River Phase II Expansion - BIMC Amendment Application Revision.pdf>

¹⁶ See QIA, Written Submissions (November 17, 2017) at ¶ 11.

21. On November 6, 2017, Baffinland provided documents in response to QIA's information request of October 26, 2017 including workshop notes, community comments, site visits, tour information, and the Mary River Caribou Protection Measures.¹⁷
22. On November 30, 2017, NIRB gave the Commission a summary of comments received by NIRB on the Baffinland Phase 2 Amendment Application and comments, and its advice and expertise to the Commission in respect of the review.
23. On December 4-5, 2017 a public hearing was held in Pond Inlet to provide the Commission an opportunity to review the Baffinland Phase 2 Amendment Application in public and to hear from participants, Elders and the public.

MANDATE OF THE NUNAVUT PLANNING COMMISSION

24. The Executive Director's August 28, 2017 report at pages 8 to 19 summarized applicable laws and relevant portions of the North Baffin Regional Land Use Plan, the Commission's rules, internal procedures, and Broad Planning, Policies, Objectives and Goals. The participants did not take issue with the Executive Director's summary, and again it is useful to consider the context of this public review as summarized by the Executive Director.
25. Land use planning plays a critical role in the development of Nunavut, and is distinct from the environmental impact assessment process.¹⁸ The Commission has a mandate to receive applications to amend land use plans, to conduct public reviews of proposed amendments, and to make recommendations to the Minister of Crown-Indigenous Relations and Northern Affairs Canada (formerly Indian Affairs and Northern Development) and the Territorial Government Minister responsible for Renewable Resources, and the Designated Inuit Organization to amend land use plans under the *NuPPAA* and Part 6 of Article 11 of the Nunavut Agreement. The *NuPPAA* provides the following in respect of plan amendments:
 - 59 (1) The federal Minister, the territorial Minister, the designated Inuit organization or any person, including a corporation or other organization, affected by a land use plan may propose to the Commission an amendment to that plan.
 - (2) The Commission must consider the proposed amendment and, if it considers it appropriate to do so, conduct a public review in accordance with the by-laws and rules made under section 17.

¹⁷ QIA, Written Submissions (November 17, 2017) at ¶ 13 – 14.

¹⁸ See Nunavut Planning Commission, North Baffin Regional Land Use Plan Amendment Application –Reasons for Decision from Public Review, DFO File NU-07-0050, NIRB File # 08MN053, April 2, 2014.

- (3) The Commission may, on its own initiative, propose an amendment to a land use plan and must subsequently conduct a public review in accordance with the by-laws and rules made under section 17.
 - (4) If the Commission conducts a public review in respect of a proposed amendment, the Commission must make the proposal public in a manner that is designed to promote public participation in its examination.
- 60 The Commission must consider the submissions made during a public review in respect of a proposed amendment and may make any revisions to the proposed amendment that it considers appropriate.
- 61(1) The Commission must submit the original or revised proposed amendment to the federal Minister, the territorial Minister and the designated Inuit organization with a written report of any public review and its recommendation as to whether the amendment should be accepted or rejected, in whole or in part.
- (2) Despite subsection (1), the Commission may, following public review, withdraw a proposed amendment that it initiated.
- 62 (1) As soon as practicable after receiving the proposed amendment, the federal Minister, territorial Minister and designated Inuit organization must accept the Commission's recommendation jointly or reject it, in whole or in part, with written reasons.
- (2) If the Commission's recommendation is rejected, in whole or in part, by the federal Minister, the territorial Minister or the designated Inuit organization, the Commission must, after considering the reasons, which it may make public, undertake once again any measures in relation to the holding of a public review under subsections 59(2) and (4) and section 60 that it considers necessary, make any changes it considers appropriate and submit a revised proposed amendment to the federal Minister, territorial Minister and designated Inuit organization.
 - (3) As soon as practicable after receiving a revised proposed amendment, the federal Minister, territorial Minister and designated Inuit organization must accept it jointly or reject it with written reasons.
 - (4) Any amendment to a land use plan based on an original or revised proposal for amendment comes into force when it is approved under subsection (1) or (3).
 - (5) The Commission must make any amendment to a land use plan public.

- 63 The Commission must, in exercising its powers and performing its duties and functions under section 60 and subsection 62(2), consult with the Nunavut Water Board and take into account any recommendations provided by that Board under subsection 36(1) of the Nunavut Waters and Nunavut Surface Rights Tribunal Act.
- 64 The Commission must, in exercising its powers and performing its duties and functions under section 60 and subsection 62(2), give great weight to the views and wishes of the municipalities in the area to which the proposed amendment relates.
- 65 In exercising their powers and performing their duties and functions under subsections 59(2) and (3), section 60 and subsections 62(1) to (3), the Commission, the federal Minister, the territorial Minister and the designated Inuit organization must take into account all relevant factors, including the purposes set out in section 47, the requirements set out in section 48 and existing rights and interests.
26. The Commission is required by section 15 of the *NuPPAA* to act in accordance with section 11.2.1 of the Nunavut Agreement which reads:
- 11.2.1 The following principles shall guide the development of planning policies, priorities and objectives:
- (a) people are a functional part of a dynamic biophysical environment, and land use cannot be planned and managed without reference to the human community; accordingly, social, cultural and economic endeavours of the human community must be central to land use planning and implementation;
 - (b) the primary purpose of land use planning in the Nunavut Settlement Area shall be to protect and promote the existing and future well being of those persons ordinarily resident and communities of the Nunavut Settlement Area taking into account the interests of all Canadians; special attention shall be devoted to protecting and promoting the existing and future well-being of Inuit and Inuit Owned Lands;
 - (c) the planning process shall ensure land use plans reflect the priorities and values of the residents of the planning regions;
 - (d) the public planning process shall provide an opportunity for the active and informed participation and support of Inuit and other residents affected by the land use plans; such participation shall be promoted through various means, including ready access to all relevant materials, appropriate and realistic schedules,

recruitment and training of local residents to participate in comprehensive land use planning;

(e) plans shall provide for the conservation, development and utilization of land;

(f) the planning process shall be systematic and integrated with all other planning processes and operations, including the impact review process contained in the Agreement; and

(g) an effective land use planning process requires the active participation of both Government and Inuit.

27. While amending a land use plan, section 65 of the *NuPPAA* requires the Commission to take into account the requirements for the contents of land use plans set out in sections 47 and 48 of the *NuPPAA*, including the Commission's broad planning policies, objectives and goals ("**BPPOG**"),¹⁹ specific planning objectives for the planning region, section 11.3.1 of the Nunavut Agreement, and Inuit objectives for Inuit Owned Lands. Under section 47 of the *NuPPAA*, the purposes of a land use plan are:

- a. to protect and promote the existing and future well-being of the residents and communities of the designated area, taking into account the interests of all Canadians; and
- b. to protect and, if necessary, restore the environmental integrity of the designated area or the planning region, as the case may be.²⁰

28. For reference, section 11.3.1 of the Nunavut Agreement reads:

11.3.1 A land use plan shall be a document containing text, schedules, figures and maps for the establishment of objectives and guidelines for short-term and long-term development, taking into account factors such as the following:

- (a) demographic considerations;
- (b) the natural resource base and existing patterns of natural resource use;
- (c) economic opportunities and needs;
- (d) transportation and communication services and corridors;
- (e) energy requirements, sources and availability;

¹⁹ Nunavut Planning Commission, *Broad Planning Policies, Objectives and Goals* (November 10, 2007) [**BPPOG**]

²⁰ Also see Nunavut Agreement s. 11.3.2.

- (f) community infrastructural requirements, including health, housing, education and other social services;
 - (g) environmental considerations, including Parks and Conservation Areas, and wildlife habitat;
 - (h) cultural factors and priorities, including the protection and preservation of archaeological sites and outpost camps; and
 - (i) special local and regional considerations.
29. The Commission has the mandate to receive applications to amend land use plans, to conduct public reviews of proposed amendments, and to make recommendations to the Minister of Crown-Indigenous Relations and Northern Affairs Canada and the Territorial Government Minister responsible for Renewable Resources to amend land use plans under Part 6 of Article 11 of the Nunavut Agreement.
30. Section 60 of the *NuPPAA* requires the Commission to consider submissions made during a public review of a proposed amendment and make any revisions it considers appropriate. When carrying out these functions, the Commission is specifically directed by section 64 of the *NuPPAA* to: “give great weight to the views and wishes of the municipalities in the area to which the proposed amendment relates.”
31. QIA and other participants noted that the Nunavut Agreement provides an easement in favour of the public on the Milne Inlet Tote Road. That easement is found in Part 4 of Article 21 and Schedule 21-2 of the Nunavut Agreement.
32. Under section 61 and 62 of the *NuPPAA*, once the Commission makes a recommendation on a plan amendment to the federal Minister, territorial Minister and designated Inuit organization, the recommendation may be accepted, or rejected with written reasons. The Commission must consider the reasons and undertake any measures in relation to the holding of a public review that it considers necessary and submit a revised proposed amendment. Once the federal Minister, territorial Minister and designated Inuit organization and the Commission are in agreement, and after having taken into consideration all relevant factors and existing rights and interests as required by section 65 of the *NuPPAA*, the NBRLUP may be modified.

APPLICABLE LAND USE PLANS

33. The NBRLUP requires anyone proposing to develop a transportation and/or communications corridor in the North Baffin Planning Region, to submit a detailed application to amend the land use plan, and a public review of the proposed corridor with

the NIRB or an environmental assessment panel appointed under article 12.4.7 of the Nunavut Agreement. It reads:

- 3.5.10 While ensuring the respect of applicable Canadian international obligations in the region, the NPC shall implement the concept of a transportation and/or communications “corridor” as a land use policy having general application, and applying to land and water routes throughout the region, based on the processes outlined in Appendices J and K. [A]
- 3.5.11 All parties wishing to **develop** a transportation and/or communications corridor shall submit to the NPC a detailed application for an amendment. This application must include an assessment of alternative routes, plus the cumulative effects of the preferred route. It shall provide reasonable options for other identifiable transportation and utility facilities. [A][CR]
- 3.5.12 The NPC, and either NIRB or a panel acting under section 12.4.7 of the [Nunavut Agreement], shall publicly review the proposed corridor to determine whether the proposal adequately meets the guidelines set out in Appendices J and K. Once it is determined that a proposal does meet the guidelines, the NPC may request the ministers to amend the plan to include the **new** transportation corridor. [A][CR]

[emphasis added]

34. Both section 3.5.11 and 3.5.12 of the NBRLUP are marked as “conformity requirements” which must be completed before a positive conformity determination may be made.
35. Appendix J of the NBRLUP requires the following information:
1. A description of the proposed corridor, including its use, its general routing, the possible environmental and social impacts, and any seasonal considerations that may be appropriate.
 2. A comparison of the proposed route with alternative routes in terms of environmental and social factors as well as technical and cost considerations.
 3. 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.

36. Appendix K of the NBRLUP sets out the following guidelines for assessing a “new” transportation corridor proposal:
1. The corridor width shall be a function of:
 - the number and type of identified facilities within the corridor;
 - physical and biophysical conditions;
 - availability of detailed engineering data for one or more transportation modes within the corridor;
 - safe distances between different facilities within the corridor; and
 - aesthetics.
 2. Corridors shall:
 - minimize negative impacts on community lifestyles;
 - improve access to other resources having high potential for development, while still maintaining the shortest practicable distance between the primary resource areas and the trans-shipment location;
 - be designed in accordance with existing and prospective land use capability including topography, soil, permafrost and wildlife; and
 - be designed in accordance with the availability of granular supplies.
 3. In keeping with existing legal and legislative requirements, including the NLCA, corridors shall not negatively impact:
 - community business, residential and projected expansion areas;
 - important fish and wildlife harvesting areas;
 - key habitat for fish and wildlife species, especially areas used by endangered species;
 - areas of high scenic, historic, cultural and archaeological value.
37. The NBRLUP requires the NIRB, or a federal environmental assessment panel, to also conduct a review of a plan amendment. Once the public review has concluded and the information in Appendices J and K has been provided, the Commission then makes a

decision whether to recommend the proposed amendment. The Commission notes that on November 30, 2017 the NIRB advised the Commission of its independent conclusion following its public review of Appendices J and K, discussed below. At the conclusion of a public review of an Amendment Application, the Commission has the discretion whether to recommend a proposed amendment to the ministers, and under the *NuPPAA*, to the Designated Inuit Organization. Both section 3.5.11 and 3.5.12 of the NBRLUP are marked as “conformity requirements” which must be completed before a conformity determination may be made.

38. As noted above, in the Negative Determination of April 8, 2015, the Commissioners interpreted a proposal by Baffinland to conduct continuous icebreaking as not being in conformity with sections 3.2.1 and 3.3.1, which were not affected by the addition of a transportation corridor in Appendix Q. As set out above, repeated again for ease of reference, sections 3.2.1 and 3.3.1 of the NBRLUP provide:

3.2.1 All land users shall refer to the land values and concerns in Appendix G, and to the Areas of Importance map, to determine important land values and concerns in areas where they plan to work, as well as to adjust their work plans to conserve these values. [CR] Those who regulate the areas shall ensure through the project approval process that these values are conserved. [A]

3.3.1 All land uses shall be conducted in keeping with the policy of sustainable development in order to protect the opportunities for domestic harvesting. All land users shall avoid harm to wildlife and wildlife habitat and damage to community travel routes through the timing of their operations, through careful selection of the location of their main camps and travel routes, and through other mitigative measures. In order to achieve these ends, all land users shall follow the Code of Good Conduct contained in Appendix H. [CR]

39. Several participants raised the issue of Caribou Protection Measures (**CPMs**) as they appear in the NBRLUP. Section 3.3.7 of the NBRLUP provides for CPMs as follows:

3.3.7 Development activities shall be prohibited within all caribou calving areas during calving season, as well as caribou water crossings in the North Baffin region. The QIA and DIAND shall implement caribou protection measures on Inuit Owned and Crown lands respectively. [A][CR] These protection measures should follow the proposed measures found in Appendix I of this document. [REC]

40. NBRLUP sections 3.4.4 and 3.4.5 read:

- 3.4.4 Caribou protection measures, based on those suggested in Appendix I - and further developed by DIAND and the QIA Inuit land managers in consultation with NWMB, local HTOs and DSD - shall be implemented for all caribou herds in the North Baffin Planning Region by DIAND and by the QIA. [A]
 - 3.4.5 The NPC, the NWMB, NIRB, DIAND, Inuit land managers and DSD should work together to monitor the effectiveness of the caribou protection measures and compliance, and to determine whether special protected areas for caribou are required. [REC]
41. Finally, the NBRLUP also suggests QIA “could follow the lead of the Kitikmeot Inuit Association and attach caribou protection measures to permits it grants to companies seeking to work on its lands.”²¹

APPLICABLE RULES, INTERNAL PROCEDURES, AND BROAD PLANNING POLICIES, OBJECTIVES AND GOALS

42. The Commission’s *Rules of Procedure for Public Hearings and Public Reviews (RPHPR)* govern the Commission’s public reviews of Amendment Applications for transportation corridors.
43. Rules 7.1 and 7.3 of the *RPHPR* say:
- 7.1 In conducting all public hearings and public reviews, the Commission shall be principally guided by:
- (a) The general principles set forth in section 11.2.1 of the Agreement; and
 - (b) The major responsibilities of the Commission in section 11.4.1 of the Agreement.
- ...
- 7.3 Where the Commission conducts a public review of an Amendment Application, in addition to the factors in section 7.1 of these rules, the Commission shall also take the following into account:
- (a) The factors listed in section 11.3.1 of the Agreement;
 - (b) The purpose of land use plans as established by section 11.3.2 of the Agreement;

²¹ NBRLUP, p. 39.

(c) Any planning policies, priorities and objectives regarding the conservation, development, management and use of land applicable to the land to which the Amendment Application relates developed by the Commission under Article 11, Part 2 of the Agreement, as may be amended from time to time; and

(d) Any principles that guided the development of the applicable land use plan to which the Amendment Application relates that are contained in that land use plan, whether express or implied.

44. Section 11.2.1 of the Nunavut Agreement is the list of principles that guide the development of the Commission's *BPPOG*, and Rule 7.3(c) of the *RPHPR* refers to the "planning policies, priorities and objectives" contained in the Commission's *BPPOG*, cited above. The Commission notes the *BPPOG* was developed by the Commission in consultation with the GoC, the GN, and Nunavut Tunngavik, Inc..²²

45. The Commission directed participants to the *BPPOG* in the Executive Director's report dated August 28, 2017 which was made publicly available on the Commission's website, and in the final list of issues sent to participants dated October 27, 2017. The *BPPOG* is also available on the Commission's website. The five high-level goals of the *BPPOG* are as follows:

Goal 1 Strengthening Partnership and Institutions;

Goal 2 Protecting and Sustaining the Environment;

Goal 3 Encouraging Conservation Planning;

Goal 4 Building Healthy Communities; and

Goal 5 Encouraging Sustainable Economic Development.

46. The *BPPOG* says in several places it is an objective of the Commission to use its planning authority to address various concerns including environmental, economic, and social impacts, and as a matter of policy, to give direction to the NIRB, government regulators and Inuit land managers where appropriate.²³

47. The *BPPOG* says under Goal 2 "Protecting and Sustaining the Environment", objective C, it is an objective of the Commission that land use planning "addresses environmental, economic, Inuit cultural and social concerns regarding transportation corridors, including all-season roads and marine shipping routes, and ship to shore activities". Policy C1

²² *BPPOG*, p. 2

²³ See e.g. *BPPOG*, Goal 2, Policies B, F, H.

requires the Commission to ensure “environmental, economic, Inuit cultural and social concerns are considered in decisions regarding transportation”.

48. Goal 2 of the *BPPOG* directs the Commission to consider various impacts relating to its land use planning objectives and policies, as follows:

Broad Land Use Planning Objectives It is an objective of the Nunavut Planning Commission that Land Use Planning:	Broad Land Use Planning Policies It is a policy of the Nunavut Planning Commission that Land Use Planning:
J protects the integrity of ecosystems, flora and wildlife habitats, paying special attention to species at risk, critical habitats, and inter-jurisdictional management of migratory animals.	J considers, and where possible prevents and/or mitigates the impacts of land use on important wildlife areas such as wildlife management zones, wildlife sanctuaries, special management zones, units and population boundaries.
K addresses the cumulative social, cultural, economic and environmental impacts of a broad range of land use activities (including transboundary impacts) on the environment, wildlife and wildlife habitat.	K considers implementing thresholds for cumulative impacts, or levels of acceptable change, of land use activities on the ecosystemic and socio-economic environment, that are supported by Government, Inuit, the Nunavut Wildlife Management Board, the Nunavut Impact Review Board and/or the Nunavut Water Board.
...	...
M provides optimum protection to the renewable resource economy and maintains vital, healthy wildlife populations, capable of sustaining harvest.	M ensures individual and cumulative impacts of land use activities on the renewable resource economy are a primary consideration in all land use decisions.

49. Objective A of *BPPOG* Goal 4, “Building Healthy Communities” says that the Commission must ensure “the social, cultural, economic and environmental endeavours of the human community are central to land use planning and implementation”. The associated policies of the Commission are:

- A.1 promotes the social, cultural, conservation and economic goals of the communities.
- A.2 supports social and economic development initiatives.
- A.3 supports Inuit social and cultural needs and aspirations by providing special management to areas of archaeological, historical or cultural importance.

50. Objective “E” of Goal 4, “Building Healthy Communities” is to ensure “land use activities and processes are not detrimental to the health, well-being and safety of Nunavut’s residents and visitors.” The Commission’s policies in that regard say:

- E.1 seeks to avoid or mitigate potential negative impacts on public health and safety that could result from development and land use.

...

51. Participants made submissions relating to employment. While participants did not direct the Commission to relevant sections of the BPPOG, the Commission notes that under Objective A of Goal 5 “Encouraging Sustainable Economic Development”, Land use planning by the Commission has the objective of encouraging “diversified economic development that increases employment, business opportunities, training and other benefits”. Policies A1 – A2 say land use planning should encourage efforts to assist certain sectors, and also to provide “a mix of the economic sectors to secure balanced economic development” to the extent possible, accounting for the “actual and potential economic opportunities at hand, the particular community or regional preferences, and the priorities and values of residents in the planning region.”
52. Goal 5 “Encouraging Sustainable Economic Development” of the *BPPOG* also provides the following objectives and policies:

Broad Land Use Planning Objectives It is an objective of the Nunavut Planning Commission that Land Use Planning:	Broad Land Use Planning Policies It is a policy of the Nunavut Planning Commission that Land Use Planning:
C.1 takes into account geographic areas of value for non-renewable resources or other commercial values and identifies development opportunities associated with those areas. C.2 recognizes the economic goals, opportunities and needs of communities specifically, and the Nunavut Settlement Area generally.	C.1 assesses the economic potential of land uses for consideration in planning decisions. C.2 requires consultation with Nunavut communities and other planning partners to identify appropriate development to achieve their economic goals.
D recognizes that the development of resources requires efficient and safe transportation infrastructure and corridors.	D takes into account Nunavummiut interests related to land, air and marine transportation corridors.
...	
F ensures that the goals of any proposed restrictions on land use are achieved with the least possible impact on undiscovered mineral resources, while taking into account environmental and social objectives.	F.1 will, before any restriction on land use is created, review and assess the available data and research, broad planning goals and objectives, legislation, policies, priorities and values of residents and other planning partners, and programs relating to conservation, land use planning, wildlife management and parks to determine whether the restriction is warranted. F.2 provides clear direction and guidance regarding the conservation, development, management and use of land to provide certainty to land users, encourage

	investment, minimize risk and costs, and streamline the regulatory process to ensure Nunavut resources can compete in a global market place.
--	--

ISSUES TO DETERMINE

53. The Commission's final list of issues released on October 27, 2017, is reproduced here for ease of reference:

1. Anyone who wants to develop a transportation corridor must provide the information listed in Appendix J of the NBRLUP. Based on the comments made in the public review and hearing, the NPC will decide:
 - a. if BIMC is required to provide the information listed in Appendix J if adding a new railway to an existing transportation corridor (road), and
 - b. if the answer is yes, has BIMC in fact provided that information?
2. Anyone who wants to develop a new transportation corridor must meet planning guidelines listed in Appendix K. Based on the comments made in the public review and hearing, the NPC will decide:
 - a. if BIMC must follow the guidelines listed in Appendix K if adding a new railway to an existing transportation corridor (road),
 - b. if the answer is yes, has BIMC met those guidelines, and
 - c. does the NPC need to make a decision to determine the physical width of the existing corridor that is to safely encompass all components of compatible linear infrastructure within the corridor?
3. Is the proposed amendment consistent with Nunavut Agreement, *Nunavut Planning and Project Assessment Act*, and NPC's broad planning policies, objectives and goals, or if not are revisions to the amendment required?
4. Do the Caribou Protection Measures in Appendix I of the NBRLUP need to be revised in connection with the proposed amendment of Appendix Q and prior to a conformity decision on the proposal to construct the railway, and if so, what revisions are necessary or advisable?
5. Should the NPC create corridors that allow proponents to carry out any type (or "mode") of transportation project, and avoid restricting transportation by any project proponent?
6. Will the addition of a proposed railway (a "multi-modal" use) to the existing transportation corridor in Appendix Q:
 - a. unduly interfere with the existing public right of access for the purpose of transportation to the Milne Inlet Tote Road easement under the Nunavut Agreement, or not, and

- b. are the proposed “multi-modal” uses (road and rail) compatible pieces of linear infrastructure within the corridor together with a public easement?
- 54. To the extent possible the Commission has attempted to address all major points in issue in this report. As a further issue not identified in the Commission’s list of issues but raised by the GoC in its submissions, the Commission has been asked to decide Baffinland is not developing a corridor, and to amend the NBRLUP to say that sections 3.5.11 and 3.5.12 of the NBRLUP are satisfied in respect of the existing corridor. The Commission must therefore determine this threshold issue of whether sections 3.5.11 and 3.5.12 and Appendices J and K of the NBRLUP were fulfilled in respect of any and all modes of transportation when the Commission considered Baffinland’s application to amend the NBRLUP for the Early Revenue Phase Proposal of the Mary River Project that led to the approval of Appendix Q of the NBRLUP establishing the Milne Inlet Tote Road and Marine Transportation Corridor. The Commission’s decision on this issue will affect how future transportation projects in the corridor are reviewed, as it may effectively exhaust the Commission’s mandate to publicly review further development of the corridor to accommodate additional uses.
- 55. The Commission is only considering Baffinland’s application to amend the NBRLUP, and **is not performing a conformity determination of Baffinland’s Mary River Phase 2 Expansion Project**. This is important because the Commission doesn’t carry out a public review for conformity determinations, which are done by the Commission’s conformity officers, but is conducting a public review of the Baffinland Phase 2 Amendment Application to make a recommendation to both branches of government and the Designated Inuit Organization to make a final decision on amending the NBRLUP.

SUMMARY OF FACTS & ANALYSIS BY ISSUE

- 56. In making this report and recommendation, the Commission carefully considered all of the evidence and the submissions and arguments made by each of the participants in the public review, even if they haven’t been specifically mentioned in this report. A list of documents is attached in Schedule “A” and the public record is available on the Commission’s website given on page 1 of this report above.
- 57. As said above, participants argued Baffinland wasn’t proposing to “develop” a corridor. Baffinland says the railway is not a “new” corridor and says the amendment is only to clarify a railway is permitted.²⁴ Many other participants also commented on whether the proposed railway would or would not “develop” the existing corridor in Appendix Q, and

²⁴ 2017-11-17 - BIMC Response to NIRB’s Request for Comments.pdf

whether Amendments are only required for “new” corridors or not. The Commission will answer this question as “Issue 0” before deciding the other issues it listed on October 27, 2017.

58. Some participants also asked for clarification on the Commission’s role. QIA’s October 2, 2017 submission said:

“... The amendment of NBRLUP, Appendix Q should establish clear and identifiable limitations on uses within the transportation corridors. If the amendment is too broadly worded and not specific as to permitted uses, it would result in foregoing the need to reassess the project if future project proposals are submitted that may involve much greater levels of ice breaking activity. While within the jurisdiction of NIRB to review the specific details of all such project proposals following an NPC conformity decisions, **in QIA’s view the NBRLUP, Appendix Q, should establish clear and identifiable general limitations on uses of a transportation corridor** as a preliminary question to guide proponents. In this instance, **suggestion has been made by the applicant that these considerations are more appropriately placed in the context of a NIRB review. QIA however is of the view that it is the nature and extent of permitted uses and activities that requires clarification at this planning stage.** QIA is working toward a resolution of these matters in the context of a reasonably worded amendment to Schedule Q. QIA expects NPC’s decisions which will **help to define the boundaries of its own role relative to that of NIRB** will have important implications for “the amendment Application”.”

[emphasis added]

59. In the public hearing on December 4 and 5, 2017, the GoC noted the following:

The Government of Canada views land use planning as a tool to provide directions on types of land use that are allowed or not allowed in an area. For example, mining can occur in some areas, while a restriction on mining would apply in other areas. The strength of the land use plan is that it provides up front guidance on how land can and cannot be used.... we see value in this process to amend the Plan in order to provide clarity on the land uses allowed within this transportation corridor. It is Government of Canada’s preference that if the amendment is to be considered, it needs to focus on the land use in question, and all the specific activities being proposed by an individual proponent. 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.²⁵

60. In its October 4, 2017 letter, Baffinland asked that the Commission limit the scope of the Pond Inlet hearing to “the [Baffinland Phase 2 Amendment Application] as filed and that issues and topics not specific to the Amendment be addressed through other appropriate and separate regulatory processes.” The GN said 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” and “the public hearing itself was not an appropriate time to discuss project-specific impacts.”²⁶
61. A brief summary of relevant evidence and submissions, and analysis, is provided below on an issue-by issue basis.

Issue “0” - Corridor “Development” and Satisfying NBRLUP section 3.5.11 and 3.5.12 FACTS

62. Baffinland applied to amend the NBRLUP. The Commission’s Executive Director’s August 28, 2017 report explained a railway and winter shipping were not included in the existing corridor described in Appendix Q of the NBRLUP. On August 30, 2017 the Commission decided to hold a public review of the Baffinland Phase 2 Amendment Application.
63. Some participants argued Baffinland isn’t proposing to “develop” the existing corridor further so Appendix Q should be interpreted to already allow for a railway as a permitted mode of transportation, among other initiatives. The Baffinland Phase 2 Amendment Application said: “Baffinland is not proposing a new route and, as shown in the Project Proposal, all activities would occur within the existing Corridor”, and asked the Commission pause the conformity determination for the Mary River Phase 2 Expansion Project, proceed with the Baffinland Phase 2 Amendment Application, then issue a positive conformity determination.²⁷
64. The GoC suggested the Baffinland Phase 2 Amendment Application is not to “develop” a corridor under section 3.5.11 of the NBRLUP. GoC’s proposed wording change to Appendix Q (which it says should be renumbered Appendix “P”) would amend the

²⁵ Nunavut Planning Commission, Transcript of NBRLUP Amendment #3 Public Hearing (December 4 – 5, 2017) at p. 47

²⁶ Government of Nunavut, Final Comments (December 12, 2017) <NPC Filename: 2017-12-12 - GN Final Comments re NBRLUP Amendment 3 [GN, Final Comments (December 12, 2017)]

²⁷ Baffinland Amendment Application (March 17, 2017) p. 1, <NPC Filename: 2017-03-17 -NBRLUP Amend#3-Mary River Phase II Expansion- Proposal for Amendment to the NBRLUP [**Baffinland Phase 2 Amendment Application**]

NBRLUP to say sections 3.5.11 and 3.5.12 of the NBRLUP are satisfied, so no more amendments will be necessary for other transportation initiatives in the corridor.²⁸ The GoC's November 17, 2017 written submissions say:

"The GoC does not believe that the proposed amendment would develop a transportation corridor, because a transportation corridor has already been developed in a manner consistent with the North Baffin Regional Land Use Plan. The process that led to the existing Appendix Q of the North Baffin Land Use Plan under sections 3.5.10 - 3.5.12 resulted in the approval of an existing Milne Inlet Tote Road and Marine Transportation Corridor."²⁹

65. The GoC's November 17, 2017 submission mentioned a summary provided by Baffinland in the ERP Amendment process on November 8, 2013, and says:

...While the amendment application does not provide alternatives to the proposed corridor, the GoC notes: (i) there is already an approved and existing corridor and it is both reasonable and preferred to concentrate linear infrastructure to a single corridor to reduce landscape fragmentation (noting further that this is a principle supported by the North Baffin Land Use Plan, specifically within sections 3.5.10-3.5.12 and Appendices J and K); (ii) the information on the public record shows alternative routes have been fully considered by BIMC and the NPC during the Early Revenue Phase, NBRLUP Amendment 2 process (see Summary of Information Provided to the NPC in Accordance with Appendices J and K of the NBRLUP, submitted to the NPC on November 8, 2013)."³⁰

66. Written submissions from WWF on October 2, 2017,³¹ and from the GN³² also say the railway would not be a "new" corridor, but proposes to modify the use of an existing corridor.
67. Baffinland's *Summary of Information Provided to the NPC in Accordance with Appendices J and K of the NBRLUP* dated November 8, 2013, mentioned in the GoC's November 17, 2017 submission, says that only a road and marine shipping was proposed for the amendment in 2014. In respect of considering other initiatives, Baffinland wrote:

²⁸ GoC, Written Submissions Attachment No. 1 (November 17, 2017) <NPC Filename: 2017-11-17 - GoC Letter re Final List of Issues & Hearing Agenda for NBRLUP Amend #3 ATTACHMENT 1 [GOC Submission Nov17 #1]; and GoC, Written Submissions Attachment No. 2 (November 17, 2017) <NPC Filename: 2017-11-17 - GoC Letter re Final List of Issues & Hearing Agenda for NBRLUP Amend #3 ATTACHMENT 2.pdf> [GOC Submission Nov17 #2]

²⁹ GoC Submission Nov17 #1 at p. 1.

³⁰ GoC Submission Nov17 #1 at p. 2.

³¹ WWF, Written Submissions (October 2 2017)

³² Government of Nunavut, Written Submissions (November 17, 2017) <NPC Filename: 2017-11-17 - GN Letter re Final List of Issues for NBRLUP Amend #3.pdf> [GN, Written Submissions (November 17, 2017)]

“Baffinland is not aware of any other possible communication and transportation initiatives along the Tote Road corridor or the Northern Shipping corridor.”

68. After the Commission’s public review of the ERP Amendment, the written decision issued on April 2, 2014 addressed the issue of whether Baffinland was developing a corridor, and the relevance of the Milne Inlet Tote Road as a public easement, interpreting the term “develop” to include constructing or operating physical works such as infrastructure, or increasing physical activities relating to an undertaking that significantly change the use or intensity of use of land or existing physical works,,³³ saying:

Although the Milne Inlet Tote Road and marine shipping from Milne Inlet already exist, these are both a “new” transportation corridor in two senses: it is “new” relative to the NBRLUP, and the significant increase in intensity of use proposed in the project would “develop” it further. ... [T]he amendment application by Baffinland, proposing to increase terrestrial and marine traffic on an existing corridor, and to construct a transportation hub at Milne Port to complete the corridor, requires an amendment to the NBRLUP in order to reflect the existing use of the “land” including the marine environment.³⁴

69. In the ERP Amendment both the Commission and NIRB decided Baffinland had provided the information required by Appendices J and K to include a road and open water shipping as a corridor in the NBRLUP. No pipeline or winter sea lift of freight were considered in Baffinland’s November 2013 summary of the ERP Amendment document, or considered in the public review.
70. In the Commission’s initial written review of Baffinland’s amendment application commenced on August 30, 2017, two participants said the issue of winter sea lifts of freight in the marine corridor in Appendix Q was not raised in the previous public review, and that the public should be consulted and have a meaningful opportunity to participate before the Commission amends the NBRLUP to permit icebreaking. The WWF’s October 2, 2017 submissions said:

...if the NPC is considering Baffinland’s proposed amendment for ice breaking/winter shipping as a blanket activity, with no limits to the type of cargo that is moved (i.e. freight, ore, fuel, etc.) or how frequently it is moved (i.e. 2 transits per year vs. unlimited transits), it is imperative that this be brought before the residents of Pond Inlet and other communities to ensure potentially affected

³³ See Nunavut Planning Commission, Reasons for Decision from Public Review: NBRLUP Amendment Application (April 2, 2014) at ¶ 71 *Filename: DFO NU 07 0050 BIMC ERPP APR 14 AMDCS.pdf*>

³⁴ *Ibid.* ¶ 73

people and organizations have been properly consulted and have sufficient opportunity to participate.

71. QIA's submission on October 2, 2017 summarized information it had acquired through its own in-person meetings and events to discuss the proposed amendment, and said the Commission should consider relevant information before recommending amendments:

"... QIA believes it is NPC's duty to consider all relevant facts before committing to amending the words within Schedule Q. In QIA's view a hearing in Pond Inlet would provide the opportunity to specifically focus upon the key issues that should be addressed within an amendment.

From QIA's public consultations, it is very clear that the proposed addition in the marine transportation corridor of ice breaking and the rail route have raised serious concerns. **When the Schedule Q was first being considered the application was in relation to open water shipping and ore haulage by truck.** The application itself notes the proponent is not seeking "the establishment of a new route within existing corridor" yet **the activities proposed in the application are new and have different implications socially and environmentally.** **Shipping through ice is not akin to shipping in open water**, treating these activities as one and the same is inappropriate. **Development of a railway, a unique piece of infrastructure, to facilitate ore transport is not akin to a smaller scale trucking operation on a pre-existing roadway.**

In fairness to the Applicant, the wording of existing Schedule Q is quite broad and does not address a number of issues that such use would raise. To ensure the NPC has a more complete picture of the consultations that have taken place with respect to "the Proposal", QIA strongly requests that NPC obtain a copy of "the IQ Report" commissioned by BIMC for the record of proceedings of "the amendment Application". This document should be taken into consideration by NPC in any determinations made. This document will demonstrate not only the proponent's efforts to engage communities, but also the nature and importance of concerns raised by community members. QIA notes this report is a summary, but clearly demonstrates the importance placed upon the opinions of residents in Pond Inlet and therefore further suggests that this is the appropriate community in which to hold a hearing. ..."

[emphasis added]

72. QIA's October 2 2017 submissions also said it is "not clear if ice breaking is a permitted use" in Appendix Q, and if the Commission "were to accept the proposed amendment wording, then the current descriptions of uses within the marine corridor in Schedule Q are insufficient." QIA thinks that Appendix Q should "establish clear and identifiable limitations on uses within the transportation corridors".

73. On October 24, 2017, as a result of concerns relating to winter sea lifts of freight, particularly as expressed by Pond Inlet, Baffinland withdrew this part of its amendment.³⁵
74. QIA's November 2017 submissions say the Commission "determined that the construction of a rail line, additional infrastructure at the Milne Inlet Port Site, and a proposed winter sealift constitute a new transportation corridor and requested that Baffinland submit a detailed application for an amendment, including an assessment of alternative routes, the cumulative effects of the preferred route, and reasonable options for other identifiable transportation and utility facilities as required by section 3.5.11 of the NBRLUP."³⁶ QIA goes on to say:

It is a matter of public record that icebreaking in the marine component of the [Milne Inlet Tote Road and Marine Transportation Corridor] was never considered in a public review of the previous amendment application by Baffinland. In any event, it is QIA's position that winter icebreaking is not consistent with the NBRLUP. This was also the finding of the Commission in its Negative Conformity Determination dated April 8, 2015. ...

...

When Appendix Q was first considered, Baffinland was proposing to carry out open water shipping and ore haulage by truck. In its present application for amendment, Baffinland states that it is not proposing a new route, but rather a different route within the existing corridor. Constructing a railway within a corridor where previously only a road had been considered is a new activity and constitutes a new use with different implications both socially and environmentally. A 110km long railway to facilitate the transportation of a higher volume of ore is not the same as a smaller scale trucking operation along a pre-existing roadway. Baffinland projects to run long trains 5-6 times a day over a 9-hour period, with the aim to transport almost 3 times more iron ore than is being currently being transported over the Tote Road in the existing corridor.

While NPC may consider whether it is appropriate for the [Milne Inlet Tote Road and Marine Transportation Corridor] to be used for more than one mode of transportation, any and all uses should be reviewed and vetted by NPC to ensure that they are consistent with Appendix Q.³⁷

³⁵ Baffinland, letter to S. Ehaloak, Executive Director Nunavut Planning Commission re Re: Proposal for Amendment to the NBRLUP in relation to the Mary River Phase 2 Expansion Project (NPC File # 148420) (October 24, 2017) <NPC Filename: 2017-10-24 - NBRLUP Amend#3- Mary River Phase II Expansion - BIMC Amendment Application Revision.pdf>

³⁶ QIA, Written Submissions (November 17, 2017) at ¶ 8.

³⁷ QIA, Written Submissions (November 17, 2017) ¶12, 36 - 37

75. As was said above, the Baffinland Phase 2 Amendment Application said it was to clarify that Appendix Q permits winter sealifts. The Commission received submissions on that point by participants expressing concern at winter sea lifts.
76. For example, Pond Inlet wrote on September 27, 2017 to say the proposed rail road is a “major concern for Hamlet Council and local people of Pond Inlet” and that ‘shipping of equipment’s to Milne Inlet ... during winter is a concern, they think it will have an impact on the seal’s breeding season.”
77. Nunavut resident David Curley wrote on September 26, 2017 saying that sea lifts in the winter would block paths to fishing and would result in thin ice that would be hard to see in the darkness.
78. On September 29, 2017, the Mittimatalik HTO raised various concerns about the railroad and winter shipping, noting Navy Board Inlet should be considered an alternative route for winter sea lifts of freight, and that icebreaking would impact community travel routes and drive away wildlife. It also said there are “many lakes” near where the railway would be constructed, the railway would pass through caribou calving areas and hunting areas, and the railway would impact caribou migration and cut off the travel route for snow machines between Pond Inlet and Igloolik.
79. Navy Board Inlet was also mentioned in meetings and workshops held by Baffinland as noted in documents provided in response to QIA’s information request.³⁸
80. In the public hearing on December 4 and 5, 2017, the Pond Inlet Mary River Phase 2 Review Committee (the **Pond Inlet Committee**) talked about “development” of a corridor under 3.5.11 & 3.5.12 as follows:

I’m concerned about the way in which both Section J and K are understood. I’ll use this example. As you know, if I build a house and I put an addition onto the house, in most jurisdictions – in fact, almost every jurisdiction I’m familiar with – you need a permit to do that, because you are developing your house. You already have the house, but you are developing it further. Section J uses the word “develop,” and it requires that the proponent produce for the Nunavut Planning Commission certain information. Our argument is that section does, in fact, apply. If you read it carefully, it says “development of a corridor.” It doesn’t say, “development of a new corridor.”... The wording of Section J is “development of,” and what the proponent

³⁸ See e.g. 2017-11-06 - BIMC Response to QIA Information Request- Item 1 Part 3 Appendix A Table of Contents.pdf>

is proposing to do by adding a railway is develop; that is, further develop a corridor that admittedly they already have....³⁹

ANALYSIS

81. Participants did not agree on whether an existing corridor approved for a road means the proposal for a railway would “develop” a corridor requiring a further plan amendment. If somebody proposes to develop a corridor, the conformity requirement in section 3.5.11 of the NBRLUP requires an application to amend the NBRLUP, or the Commission can give a negative conformity decision. Participant submissions say there is an existing corridor and that the NBRLUP uses the word “new” in section 3.5.12 and Appendix K. It doesn’t say “new” in sections 3.5.10, 3.5.11 or Appendix J. The Commission considered these submissions in its interpretation of these sections. It doesn’t believe reading sections 3.5.10 to 3.5.12 and Appendices J and K to exclude amendment applications for developments to existing corridors because of the word “new” in some places but not others is correct.
82. The “and/or” between “transportation” and “communications” in sections 3.5.10 and 3.5.11 of the NBRLUP means a corridor can be proposed for one purpose (like communications) and not the other (like transportation). But section 3.5.12 of the NBRLUP says if a proposal meets the guidelines, the Commission “may request the ministers to amend the plan to include the new transportation corridor”. The Commission does not accept a strict interpretation because that would mean, for example, someone might propose an amendment for a new communications corridor but the Commission strictly interpreting section 3.5.12 would be prevented from recommending it be added to the NBRLUP because that section only refers to a “new transportation corridor” and not a communications corridor.
83. If the Commission reads section 3.5.12 too literally, it would have to require applicants provide information on all imaginable modes of transportation and communication, whether or not the applicant has the ability to provide that information. Interpreting sections 3.5.12 and Appendices J and K too strictly to require applicants to provide detailed engineering and technical information on all conceivable modes of transportation and communications initiatives would make it too difficult to develop corridors and would be inconsistent with the broad goals of building healthy communities and encouraging sustainable economic development.
84. Under sections 3.5.11 and 3.5.12, the Commission may, for example, be satisfied on written evidence filed in a public review that a proposal to develop another corridor within

³⁹ Nunavut Planning Commission, Transcript of NBRLUP Amendment #3 Public Hearing (December 4 – 5, 2017) at p. 26

an existing corridor does not require an amendment. Alternatively, the Commission may determine that an alternative route is more appropriate for the corridor development because it would not be suitable to include other communications and/or transportation initiatives in the existing corridor. In the latter case, the Commission might recommend a “new” corridor be established to accommodate the proposed development. As an example, the Commission may accept that a telecommunications cable is suitable along one alignment and approve a communications corridor, but may find that it is not suitable for another initiative such as a pipeline and suggest an amendment for a different alignment.

85. In this case, Baffinland proposes a railway that mostly follows the original road and argues the addition of a railway is only a clarification of the existing “road” corridor under Appendix Q. Baffinland didn’t propose a railway the last time it applied to add the road as a corridor in Appendix Q of the NBRLUP. The terrestrial corridor in Appendix Q is described as a “fixed smooth or paved surface, made for travelling by motor vehicle or carriage throughout the year”. The Commission doesn’t agree that adding a railway to Appendix Q is only a clarification. Baffinland is proposing to develop a corridor not previously applied for.
86. The railway may go across the road, or deviate from the original road alignment, possibly into caribou calving grounds not shown in the NBRLUP but described by residents of Pond Inlet. After the Commission’s public review of the ERP Amendment, the written decision issued on April 2, 2014 addressed the issue of whether Baffinland was developing a corridor, and the relevance of the Milne Inlet Tote Road as a public easement, interpreting the term “develop” to include constructing or operating physical works such as infrastructure, or increasing physical activities relating to an undertaking that significantly change the use or intensity of use of land or existing physical works.⁴⁰ As the Pond Inlet Committee said, development is like adding on to a house – even though the house is already there, it is still a development. Reading NBRLUP Appendix Q to include any kind of transportation and/or communication project, even if no information on other kinds of transport was given, and Inuit and affected municipalities didn’t get to review and comment on those kinds of uses, would be unfair and against section 11.2.1 (d) of the Nunavut Agreement that requires “active and informed participation and support”. It also wouldn’t meet BPPOG Goal 2, objective C, and policy C1, above.
87. Baffinland withdrew part of its Baffinland Phase 2 Amendment Application to amend Appendix Q to do winter sealifts, and the Commission took that question off the final list of issues, but QIA asked the Commission to say if an amendment for icebreaking is

⁴⁰ See NPC Reasons for Decision from Public Review: NBRLUP Amendment Application (April 2 2014) at para 71
Filename: DFO NU 07 0050 BIMC ERPP APR 14 AMDCS.PDF

consistent with sections 3.2.1 and 3.3.1 of the NBRLUP or if other amendments are required. As QIA said in its October 27, 2017 letter:

“...When the Schedule Q was first being considered the application was in relation to open water shipping and ore haulage by truck. The application itself notes the proponent is not seeking “the establishment of a new route within existing corridor” yet the activities proposed in the application are new and have different implications socially and environmentally. Shipping through ice is not akin to shipping in open water, treating these activities as one and the same is inappropriate. Development of a railway, a unique piece of infrastructure, to facilitate ore transport is not akin to a smaller scale trucking operation on a pre-existing roadway.”

88. The Commission believes that even if a corridor exists in Appendix Q, a proponent still has to apply to amend the NBRLUP to add any new transportation uses to the corridor that were not previously considered. A proposed transportation or communications project not of a type expressly included in the corridor does not conform to the NBRLUP and may require an amendment. If a project is for a type of transportation or communications included in the corridor, it must still meet other conformity requirements in the NBRLUP that apply in the corridor.
89. The Commission recommends revised wording of the amendment to make clear a public review isn't needed if a project is of the same type already provided for by an existing corridor, meaning that a project conforming to the NBRLUP may go to the NIRB for screening and review. But the Commission has not publically reviewed an application for a winter sealift (icebreaking) corridor and doesn't recommend the NBRLUP include a winter sealift corridor. The Commission's conformity officers will keep looking at winter sealift and other icebreaking projects to make sure they meet all conformity requirements of the NBRLUP.

Issue #1 – Appendix J of the NBRLUP

FACTS

90. Baffinland's Phase 2 Amendment Application (re-organized below based on the Commission's final list of issues) said:⁴¹

The Project Proposal does not seek the establishment of a new route within the existing corridor established under Appendix Q of the NBRLUP. The preferred route follows the existing Tote Road.... No other alternatives to the route are

⁴¹ Baffinland Phase 2 Amendment Application

considered feasible. There would be no change to the marine component of the existing transportation corridor....

The continued utilization of the existing route was based on the following criteria:

- Existing infrastructure;
- Technical feasibility;
- Regulatory acceptability;
- Cost-effectiveness;
- Impacts on the natural environment;
- Impacts to the socio-economic environment (mainly land use); and
- Community preference or acceptability.

...

The consideration of these criteria and factors meant a preferred route that follows the existing Tote Road...was the only feasible option and consideration of alternative railway routes would not be practical or reasonable. This position is based on:

- The alignment is located along the existing transportation corridor established by Amendment No. 2 of the North Baffin Regional Land Use Plan.
Transportation corridors are established under land use planning principles with the intent of accommodating future transportation and/or communications facilities, to minimize the overall disturbance to the landscape. Therefore, construction of the north railway along the existing transportation corridor is consistent with both land use planning principles and with the amended NBRLUP.
- The existing road is available to support construction, which significantly reduces the railway construction costs. By comparison, when Baffinland builds the south rail in the future, it will be necessary to construct a dedicated construction access road to facilitate construction, because a road does not currently exist in that location. Selection of an alternative route for the north railway would require additional construction access roads.
- By using a common transportation corridor, impacts to land users as well as wildlife is minimized. Losses of wildlife habitat, sensory disturbance effects to wildlife, and impacts to Inuit land use and harvesting are minimized.
- Archaeological surveys over multiple years along with mitigation of sites through systematic data recovery have established that while archaeological sites do exist within the corridor, no culturally significant sites have been identified to date that would be potentially affected by the proposed project.

91. The Baffinland Phase 2 Amendment Application also says:⁴²

No new route is proposed for the transportation corridor and therefore no change to the cumulative effects of the route will be realized. The cumulative effects of including the mode of transportation of rail as an acceptable land use within the existing terrestrial component of the corridor include:

- Less interactions with traditional land uses: the reduced frequency of trips required when using rail for transport of ore will lessen interference with Inuit travel and harvesting activities while maintaining safety, access and ease of travel with the use of designated caribou, snowmobile and ATV crossings, and hunter and visitor site access procedures.
- No new route for linear infrastructure: the preferred railway route will follow along the existing Tote Road. The development of the railway between the Mine Site and Milne Port will therefore not result in the creation of a new linear development route in the area, and will therefore not create increased access to any currently remote areas and associated environmental issues or represent an additional linear barrier to traditional land users and wildlife.
- Economic sustainability: development of a railway within the alignment of the existing transportation corridor allows Baffinland the only feasible way identified of achieving overall economic feasibility and long-term sustainability.
- Reduced interactions: the development and use of the railway from the Mine Site to Milne Port will have the effect of reducing and ultimately replacing the use of haul trucks to transport iron ore along the terrestrial component of the transportation corridor. This will reduced the likelihood of potential disturbances to other land users and wildlife in the area including collisions or other sources of possible injury or mortality.
- Reduced dust and sedimentation: the development and use of the railway and ultimately the replacing the use of haul trucks to transport iron ore along the terrestrial component of the transportation corridor will create far less dust and associated sedimentation along the terrestrial component of the transportation corridor.
- Improved air quality: the planned use of rail as opposed to truck traffic will also considerably reduce any resulting atmospheric emissions and resulting air quality effects that would result from this vehicular traffic (including carbon monoxide (CO), nitrogen oxides (NOX), total suspended particulates (TSP), volatile organic compounds (VOCs), greenhouse gases (GHGs)).

⁴² *Ibid.*

- Reduced noise: in general, noise and vibration are not considered to be a significant issue for low speed rail operations such as this, except in the direct vicinity of rail yards and during car connections. Ballasted track (particularly with timber ties) absorbs vibration to some extent, and maintenance activities carried out on a regular basis will also correct many of the small irregularities that cause major noise and vibration in the railway system. An estimate of, and analysis regarding, potential Project-related air and noise emissions, and a comparison of those related to truck traffic and the railway, will be calculated and provided in the EIS in the event Baffinland is approved to proceed to the NIRB process.

No new route or activity/land use is proposed for the marine component of the transportation corridor and therefore no new cumulative effects will be realized. The planned development of the railway and the expansion of the facilities at Milne Port will allow Baffinland to optimize its planned iron ore shipments during the ice free / open water period. As a result, Baffinland will be seeking approval to ship ore from July 01 to November 15. This is considered to be a more acceptable scenario than the requirement under the previous concept which would have seen the shipping period extending from early June through the end of March, along with associated ice management, trans-shipping activities and facilities and required seasonal fuel storage at sea.

92. The GoC and GN both say there's already a transportation corridor so Baffinland doesn't have to meet Appendices J and K. Both also say that if the Commission decides Baffinland has to meet Appendices J and K, it has given enough information for the Commission to decide to recommend the proposed amendment.⁴³
93. The GN's says that "BIMC has requested an amendment to the already existing corridor established in Appendix Q through NBRLUP Amendment #1. Given the above, the GN submits that Appendices J and K do not apply..."⁴⁴ and "the s. 3.5.10 information requirements have been satisfied to amend the already existing corridor established in Appendix Q. In the alternative that the NPC should find that Appendices J and K do in fact apply, the GN submits that information requirements have been satisfied."⁴⁵
94. QIA's October 2, 2017 submissions about possible alternative routes for winter sea lifts also said:

⁴³ GN, Written Submissions (November 17, 2017); GoC Submission Nov17 #1

⁴⁴ GN, Written Submissions (November 17, 2017), p. 2

⁴⁵ *Ibid.* p. 2

... As understood by QIA, a primary community concern in this regard is the community desire to modify the existing marine corridor, or possibly create a 2nd marine corridor for winter shipping that follows the Navy Board Inlet route. BIMC has recognized that this is the community preference but indicates in “the amendment Application” that “no other route is feasible.” QIA is of the view that a public review process must be structured to explore that assumption and possible alternative routes. In selecting to refine an existing route to include additional activities, consideration of alternative routes for such activities becomes restricted. QIA does not believe such an approach aligns with the intent of an amendment process.

As “the IQ Report” demonstrates the community views on this topic of an alternate route have long been expressed, yet have not been adequately discussed or considered within the present application. QIA believes it is possible, given the broad mandate of the NPC, to give due consideration as to how this topic can be addressed within the current application. NPC has indicated in its request for comments that it may accept or revise the proposed plan amendment. Certainly the Nunavut Planning and Project Assessment Act gives NPC the express authority and mandate to make any revisions to the proposed amendment “that it considers appropriate” [see sections 59, 60, etc.]. BIMC has not applied for a new route or additional corridor to be added to Appendix Q, but QIA sees no reason why this predominant community concern cannot be considered in “the amendment Application”. As part of NPC’s review process, including a proposed public hearing in Pond Inlet, QIA would like to hear further from BIMC on this issue, and QIA is willing to work with BIMC and community members to see if solutions are available.

95. In the QIA November 2017 submission, it says “it is not clear whether, in deferring the delivery of much information to the environmental assessment process, Baffinland’s [Baffinland Phase 2 Amendment Application]... meet the information requirements set out in Appendix J of the NBRLUP.”⁴⁶ QIA says at paragraph 22 and 23:

Beyond stating the simple economic imperative in favour of transportation by rail, no road versus railway analysis has been provided. No alternative rail routes have been presented, meaning the relative impacts of the proposed route have not been assessed in comparison to alternative routes. There is no evidence to show that Baffinland has selected the most environmentally and socially viable rail route.

Finally, Appendix J further requires that an applicant provide: “An assessment of the suitability of the corridor for the inclusion of other possible communication and

⁴⁶ QIA, Written Submissions (November 17, 2017) p. 7

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."

96. The Pond Inlet Committee provided a long written submission on November 17, 2017⁴⁷ about potential impacts the railway could have on Inuit "main travel routes" between Pond Inlet and Igloolik for caribou hunting and social purposes that cross the existing tote road multiple times during the trip, and on caribou. Project impacts are relevant to the NIRB stage, but Appendix J and K of the NBRLUP and many sections of the BPPOG above say the Commission should consider possible environmental and social impacts, including on Pond Inlet, and existing and proposed transportation systems.

97. The Pond Inlet Committee's November 2017 submission says Appendix J requires looking at possible social impacts and consequences, and that a railway could cut off or disrupt community travel. It also says Phillip's Creek Valley is "heavily used by travellers", and that main travel routes are located less than a kilometer away from the Tote Road along the route and that to avoid steep sections people have to "cross back and forth multiple times".⁴⁸ It says the railway will negatively affect food security and raise costs on hunters and their families.⁴⁹ It says:

"Any activities that affect the population of Baffin Island caribou and that continue to make it necessary for hunters to travel south will have financial implications related to the cost of travelling and hunting with implications, in turn for food insecurity in Mittimitalik."

98. The Pond Inlet Committee asks whether the railway will result in local jobs and economic benefits,⁵⁰ and has concerns about employment at Mary River like job opportunities and quality for Inuit, women, harassment, shifts and impacts on family life. It has concerns about social infrastructure and services like daycares and counselling. It also says:

"Baffinland has not provided any data on how the development of a railroad during both construction and operation phases might impact upon Inuit employment and subsequently might affect demands for services (day care, counselling with respect to family relations and education with respect to financial and related

⁴⁷ Pond Inlet, Written Submissions (November 17, 2017)

⁴⁸ *Ibid.* p. 3

⁴⁹ *Ibid.* p. 10

⁵⁰ *Ibid.* p. 9

considerations), as well as impacts related to income, equipment and capacities for hunting and other forms of land use.”⁵¹

99. On caribou, the Pond Inlet Committee’s November 2017 submissions say the railway will have more impacts on wildlife (caribou), affecting herds with critically low numbers. It says trains may cause wildlife injury and fatalities more than ore trucks because trains cannot stop quickly and there may be collisions. The Pond Inlet Committee also argues the railway may alter caribou movement with sensory disturbances, physical barriers, or by entrapping some caribou as the effectiveness of crossings remains unknown.
100. In its November 2017 submissions, Pond Inlet Committee says Baffinland is proposing to add a new mode of transportation not already present in the plan, and that “BIMC is required to provide the information listed in Appendix J of the NBRLUP if adding a new railway to the existing transportation corridor” as the Appendix “applies to the development of a new or (the further development of) an existing corridor”.⁵² Appendix J does not refer to a “new corridor”. Based on its submissions outlining information gaps summarized above, the Pond Inlet Committee concludes that “BIMC has not provided the information listed in Appendix J as required.”⁵³
101. The NIRB’s November 30, 2017 letter says the Commission has jurisdiction to decide for itself based on the submissions and information received whether the information requirements in the NBRLUP are met, but from the NIRB’s perspective Appendix J has been “reasonably” met based on the current stage in the process. NIRB also recommends Baffinland provide further evidence to the Commission “[t]o ensure that the proposed railway routing is appropriate from a land use planning perspective”. 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 the NIRB to complete the assessment of all components of the proposed Phase 2

⁵¹ *Ibid.* p. 9 – 10.

⁵² *Ibid.* p. 16 – 17

⁵³ *Ibid.* p. 17

Development Project Proposal. The NIRB notes that given this complex context, it is perhaps not surprising that the parties are not in agreement regarding the extent to which the information supplied by Baffinland to date in support of the Amendment #3 Application is sufficient to meet the requirements of Appendix J and K.

At the outset, the NIRB emphasizes that it is entirely within the Commission's jurisdiction to decide whether, on the basis of all submissions received and on the basis of submissions received at the upcoming Public Hearing, the information requirements of the NBRLUP have been met such that the Commission can proceed to decision-making in respect of Baffinland's Amendment #3 Application. 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."⁵⁴

102. In the public hearing on December 4 and 5, 2017, Baffinland answered questions about losing jobs as follows:

There will be no lost jobs as a result of this expansion. There will be transition of jobs. The transition will be from a truck-hauling route, so we will add more trucks to our mine. We're now moving three times the amount of product, so there are going to be different trucking jobs. There are going to be lots of equipment operations jobs. As well, from an Inuit perspective, we have very few Inuit currently driving our tote road in terms of hauling material right now.⁵⁵

103. In Baffinland's December 19, 2017 response submission, it wrote:

Secondly, concerns specific to Pond Inlet have been expressed in relation to the asserted inequitable distribution of economic benefits The Mary River Project has been and continues to be a source of significant economic benefits both for the five North Baffin communities referenced in the IIBA and for the region and Nunavut as a whole. Issues related to the particular allocation of Project benefits mandated under the IIBA are beyond Baffinland's control Such issues are not

⁵⁴ Letter from Nunavut Impact Review Board Executive Director R. Barry (November 30, 2017), p. 4, <NPC Filename: 2017-11-30-08MN053-NIRB Ltr to NPC Re NIRB Summary of Information Received-OEDE [NIRB Letter November 30, 2017]]

⁵⁵ Nunavut Planning Commission, Transcript of NBRLUP Amendment #3 Public Hearing (December 4 – 5, 2017) at p. 24

relevant to the substance of the land use planning amendment application.... Baffinland is prepared to work in collaboration with the Government of Nunavut (GN), the Hamlet of Pond Inlet and QIA to address issues related to the distribution of benefits.⁵⁶

ANALYSIS

104. As said above, the NBRLUP was amended for Baffinland's Early Revenue Phase for a terrestrial component and a marine component of a transportation corridor to let Baffinland truck ore using the road, construct a port and permanent ore dock, and have open-water shipping. Participants didn't agree on whether Baffinland should be exempt from Appendix J. As said above, the Commission believes the Baffinland Phase 2 Amendment Application is for the "development" of a corridor. The Commission also says that Baffinland must meet Appendix J. Looking at all the information from Baffinland, the Commission has determined that Baffinland has met the Information requirements in Appendix J for the purpose of a railway, but not for all possible uses of a corridor.
105. QIA says icebreaking wasn't looked at in the public review that led to the approval of Appendix Q. The Commission also never before got an application to create a railway corridor from the Mary River mine site to Milne Port. Baffinland's *Summary of Information Provided to the NPC in Accordance with Appendices J and K of the NBRLUP* dated November 8, 2013, says the ERP Amendment didn't include any other modes of transportation like railways, winter shipping, or pipelines. But airstrips were included in the original Mary River project and Baffinland has already constructed airstrips at the Mary River mine site and Milne Port, so the Commission has taken the GoC's recommendation to include airstrips and icestrips in its revised corridor amendment.
106. If the Commission were to accept the argument that Baffinland doesn't have to meet Appendix J to add other modes of transportation not already in Appendix Q, then any use of a corridor for transportation, including winter shipping of freight through ice and transporting oil by pipeline, would by implication be a conforming use without any public review of those uses of land. This wouldn't meet the Commission's duty to ensure active and informed participation of Inuit in planning or to hold public reviews when amending plans. The Commission doesn't agree that Baffinland, on these facts, should not have to meet Appendix J. As said above, Appendix Q doesn't say the corridor has a rail line, and this is a further development of the corridor. Baffinland must provide the information required by Appendix J.

⁵⁶ Baffinland, Written Response (December 19, 2017), p. 2, <NPC Filename: 2017-12-19 BIMC Final Response to Hearing & Post Hearing comments re NBRLUP Amendment 3.pdf> [**Baffinland, Written Response (December 19, 2017)**]

107. Although Baffinland, the GN, and the GoC argue Baffinland is exempt from Appendix J, they also believe that Baffinland has met the information requirements in Appendix J. NIRB also advised the Commission that Appendix J has been met for the purpose of a railway. It is the Commission's understanding that more detailed information will be provided in the environmental assessment expected to follow this amendment. The Commission has considered the Baffinland Phase 2 Amendment Application, written submissions, and oral comments, as well as material associated with the previous review that resulted in Appendix Q, and concludes that the Baffinland Phase 2 Amendment Application has met the informational requirements of Appendix J, but only to add a railway to the corridor.
108. 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. For land use planning, Baffinland's application to amend the NBRLUP may also have environmental, social, economic, and other impacts beyond the impacts of its railway project, and the Commission recommends decisions to the signatories that may have wide-ranging effects.
109. The Commission's land use planning is meant to guide development and meet requirements in the Nunavut Agreement and *NuPPAA*. The Commission believes Baffinland has provided enough information to let the Commission recommend adding a railway to Appendix Q of the NBRLUP, but not other uses. The Commission recommends that Appendix Q be amended to include railway activities and related infrastructure as conforming uses, but does not agree that approving the original Appendix Q meant that all further transportation corridor initiatives, including ones that haven't been proposed or publicly reviewed, are exempt from sections 3.5.11, 3.5.12, and Appendices J and K of the NBRLUP.
110. The Commission has revised the proposed amendment to clarify the Commission doesn't need to further review amendments to build roads, railways, or have open water shipping in the corridor, but to also say that any other types of transportation and/or communication initiatives are not exempt from sections 3.5.11, 3.5.12 and Appendices J and K of the NBRLUP. Conformity determinations will still be required regardless of the type of project.
111. Several participants said Baffinland hasn't provided information on alternative routes. Baffinland's response on December 19, 2017 did say that railway limitations regarding grade (steepness) require the alignment to deviate from the road in one location to go around a hill. Also, because building healthy communities and encouraging sustainable economic development are important under the BPPOG, and the NIRB will also review the

project to mitigate impacts, the Commission thinks the amendment to the transportation corridor to add a railway and the environmental and social impacts and seasonal considerations, are well enough described for adding a railway. Even though Baffinland didn't provide a detailed comparison of the proposed route with alternative routes the Commission agrees with the GoC's comments that for the railway "it is both reasonable and preferred to concentrate linear infrastructure to a single corridor to reduce landscape fragmentation". But other communications and transportation initiatives weren't fully considered or publicly reviewed, so the Commission doesn't recommend a multi-modal corridor at this time.

112. The Commission concludes that before a project to develop a corridor can conform to the NBRLUP, a proponent must submit a proposal to amend the NBRLUP and provide the information required in Appendix J. Because Baffinland only proposed a transportation corridor for rail not including any other uses, the Commission believes the information requirements are met for a new railway in the transportation corridor. This conclusion might have been different if Baffinland or some other party had previously proposed additional uses be added to Appendix Q such as pipelines and ice breaking in the marine environment. Although the GoC suggested including a pipeline in its submissions, Baffinland said it is not aware of other initiatives. The GoC isn't the amendment applicant in this public review and the Commission doesn't want to reject the Baffinland Phase 2 Amendment Application for a railway just because the GoC suggested allowing pipelines too.
113. The Commission says that Appendix J has been met to add a railway to the permitted uses of the corridor, with revisions attached to this report as Schedule "B".

Issue #2 – Appendix K of the NBRLUP

FACTS

114. Baffinland says it isn't developing a new corridor but was following an existing corridor so it doesn't have to meet Appendix K. Or that it has met Appendix K. The Baffinland Phase 2 Amendment Application (re-organized below based on the list of issues), says:

By following the existing route the following factors are also able to be met:

- Minimises negative impacts on community lifestyles by following the terrestrial component of the existing transportation corridor;
- Improves access to other resources having high potential for development, maintaining the shortest practicable distance between the primary resource areas and the trans-shipment location;
- Designed in accordance with existing and prospective land use capability including topography, soil, permafrost and wildlife has been designed in accordance with the availability of granular supplies;

- Strives to not negatively impact community business, residential and projected expansion areas;
 - Strives to not negatively impact important fish and wildlife harvesting areas;
 - Strives to not impact key habitat for fish and wildlife species, especially areas used by endangered species; and
 - Strives to not impact high scenic, historic, cultural and archeological value.
115. Baffinland says multi-modal transportation is contemplated in the Draft Nunavut Land Use Plan (the **DNLUP**) and is consistent with the *BPPOG*, and proposes a 10 km corridor width from the DNLUP for both road and railway.⁵⁷ Baffinland's December 19, 2017 submissions explain: "The maximum distance between the rail alignment and the tote road is 7 km, which is less than the 10 km wide transportation corridor concept presented by the Nunavut Planning Commission (NPC) in its Draft Nunavut Land Use Plan (NPC, 2016)."⁵⁸
116. QIA's October 2, 2017 submission say: "BIMC has also stated that the existing 10 km terrestrial corridor generally along the Milne Inlet Tote Road should be amended to include permitted use for a railway component, partly based on the proposed new draft Land Use Plan" and the term "Linear Infrastructure Corridor" in the draft plan "is suggestive of what NPC could eventually include as a definition within the Nunavut Land Use Plan, but falls short of being a clear and definitive definition for "the proposed Amendment".
117. QIA's November 17, 2017 submission says if the Commission considers the definition "Linear Infrastructure Corridor" from the DNLUP, it must make a decision on the actual width of the corridor and the uses of the corridor. ⁵⁹ QIA says: "In its November 7, 2017 response [to QIA's request], Baffinland states that the level of information requested will be provided as part of the environmental assessment review process to be conducted by NIRB in connection with the Phase 2 Project, and that the information included in its March 2017 amendment application should be sufficient for the Commission and NBRLUP amendment purposes. QIA disagrees with the suggestion that such information is not required."
118. The GN submits that Appendices J & K do not apply but "in the alternative that the NPC should find that Appendices J and K do in fact apply, the GN submits that information requirements have been satisfied."⁶⁰

⁵⁷ Baffinland, Presentation (November 27, 2017) <NPC Filename: 2017-11-27 BIMC Presentation NBRLUP Amendment Public Hearing (Eng-Inuktitut).pdf>

⁵⁸ Baffinland, Written Response (December 19, 2017)

⁵⁹ QIA, Written Submissions (Nov 17 2017) at ¶ 35.

⁶⁰ GN, Written Submissions, (November 17, 2017) p. 2

119. The GoC says: “To the extent that NPC considers appendix K applicable in the circumstances, it is the view of the GoC that BIMC has given due consideration to the guidelines within Appendix K and responded to them to a reasonable degree in its plan amendment application”⁶¹
120. The Mittimatalik HTO’s written submissions dated September 29, 2017 informed the Commission of many lakes near the area where the railway would be constructed, and said that a community travel route from Pond Inlet to Igloolik by snow machine will be cut off. Pond Inlet’s final submission opposing the amendment was also concerned about community travel and culture, little information from Baffinland on negative social impacts, and on caribou migration routes. But the mayor of Igloolik wrote a letter stating: “We are supportive of Baffinland’s project moving to the Nunavut Impact Review Board.”
121. WWF Canada’s submission on October 2, 2017 says its mandate “is one of conservation, but we understand and have worked to promote the importance of seeing the Mary River project develop in a manner that supports the future interests of the Inuit of Nunavut – both in terms of wildlife conservation and through the realization of jobs and benefits for the people of the North Baffin region and Nunavut, as a whole.”⁶² The WWF submission on October 2, 2017 said:
- WWF recognizes the importance of development to Nunavummiut and of developing projects like Mary River in a sustainable manner. It is a reality that these projects will require railways and other significant infrastructure.⁶³
122. The WWF’s October 2017 submissions said the “proposed amendment has the potential to significantly impact upon the marine environment, terrestrial environment, and the many wildlife species that live and migrate within the areas potentially impacted by the amendment activities,”⁶⁴ and said Baffinland hadn’t met the information requirements by answering that no information is being provided, and that Baffinland hasn’t provided adequate information. WWF’s submissions say that Baffinland’s application “does not adequately address the capability of topography, soil, permafrost and wildlife to support or withstand the development of a railway” and does not address the availability of granular supplies.⁶⁵ WWF says that following the existing corridor does not mean the factors under Appendix K Items 2 and 3 are addressed, and that further information is required.⁶⁶ The Appendix Q was only approved for upgrades to the Milne Inlet Tote Road that has existed as a public easement since the 1960s, whereas development of a railway may involve

⁶¹ GoC, Written Submissions (November 17, 2017), p. 3

⁶² WWF, Written Submissions (October 2, 2017) p. 2

⁶³ *Ibid.* p. 3

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

significant changes to topography.⁶⁷ It believes the Commission needs more information under Items 2 and 3 of Appendix K.⁶⁸

123. The Pond Inlet Committee submits that Baffinland's proposed railway "contravenes" Appendix K because "corridors shall not negatively impact key habitats for fish and wildlife species and especially areas used by endangered species, as well as important fish and wildlife harvesting areas."⁶⁹ It suggests the railway may cause the release of more dust that can affect plants and wildlife, which Inuit eat, and causes faster thawing of snow and ice.⁷⁰ The Pond Inlet Committee also says there has been "no 'proper consultation...' in relation to this proposal". The Pond Inlet Committee says that "BIMC has not met these guidelines [in Appendix K] and NPC needs to make a decision to determine the physical width of what constitutes a newly defined corridor that is to safely encompass all components of compatible linear infrastructure within the corridor."⁷¹
124. The Pond Inlet Committee, suggested the preamble to Appendix K be revised because of its use of the word "new". The Pond Inlet Committee says that because the word "new" appears in Appendix K, "BIMC *may not be* required to follow the guidelines listed in Appendix K if adding a new railway to an existing transportation corridor."⁷² The Pond Inlet Committee still says that Items 2 and 3 of Appendix K cannot be ignored as they are required in Appendix J which does not only relate to "new" corridors. The Pond Inlet Committee also notes that the guidelines may apply to the portion of the proposed railway that deviates from the Tote Road as that deviation has implications for boundaries and buffer zones, implying that portion would in effect be a "new" corridor.⁷³
125. QIA said detailed engineering data is needed before the Commission can recommend an amendment to the NBRLUP. Baffinland didn't present this information and said that information will be provided to the NIRB. In its November 30, 2017 letter the NIRB says: "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, but NIRB also says that Baffinland should file more information under Appendix K before the Commission can make its decision:

With regards to the requirements of NBRLUP Appendix K that transportation corridors shall "be designed in accordance with existing and prospective land use capability

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Pond Inlet, Written Submissions November 17 2017, p. 8

⁷⁰ *Ibid.* p. 12 – 13.

⁷¹ *Ibid.* p. 17 – 18.

⁷² Pond Inlet Mary River Phase 2 Review Committee, Written Submissions (November 17, 2017) <NPC Filename: 2017-11-17 - Pond Inlet, Mary River Phase 2 Review Committee Submission re NBRLUP Amendment #3.pdf> [**Pond Inlet, Written Submissions (November 17, 2017)**], p. 17.

⁷³ *Ibid.*

including topography, soil, permafrost and wildlife; and be designed in accordance with the availability of granular supplies”, the **NIRB notes that Baffinland’s amendment application appears to include only minimal information that addresses these points.** More specifically, the current **application does not discuss the availability/source of granular supplies expected to meet the construction needs of the proposed railway and does not specify whether new or existing borrow pits would be created/used along the Tote road alignment to support site preparation/construction of the proposed railway system.** Previous geotechnical inspections have identified areas along the Tote Road alignment with **significant terrain stability issues (due to extensive permafrost degradation)** and geotechnical reports provided by Baffinland through the NIRB’s monitoring program demonstrate that **some of the borrow pits used for the Tote Road upgrades in 2009 continue to affect the stability of the road area.** QIA inspections and NIRB site visits have also observed extensive thaw of ice-rich materials immediately at the edge of the road or toe of the road embankment. **To ensure that the proposed railway routing is appropriate from a land use planning perspective, the NIRB suggests that additional evidence could be filed by Baffinland with the Commission to demonstrate that sufficient consideration has been provided to meet the spirit and intent of these specific guidelines.**

In conclusion, ... parties are correct in anticipating that **a higher level of detail will be required by the NIRB** if the Commission concludes that the Phase 2 Development Project Proposal has met the land use planning requirements of the Nunavut Agreement and NuPPAA and the Phase 2 Development Project Proposal proceeds to the NIRB for assessment.⁷⁴

[emphasis added]

126. On December 19, 2017 Baffinland filed more information on topography, soil, permafrost, wildlife and the availability of granular supplies:

“Topography is an important consideration for construction of a railway, because railways have limitations regarding grade (i.e., steepness) and turn radius. The proposed alignment of the North Railway meets these design requirements. To meet these requirements, it was necessary to deviate from the Tote Road by circumventing the hill at km 67. Starting from Milne Port, the railway will run alongside the Tote Road within the Phillip’s Creek valley to the top of the watershed at km 57. From this point until km 84.5, it is necessary for the railway to deviate from the Tote Road alignment, travelling west of the road to circumvent a localized height of land to maintain acceptable grades for the railway. The only

⁷⁴ NIRB Letter November 30, 2017, p. 4 – 5

alternative to circling this hill would be to undertake a massive excavation, which would be both costly and create a large disturbance on the landscape....

With respect to soils and permafrost, terrain mapping and geotechnical investigations have been completed along the length of the North Railway. While there are areas of ice-rich soils along the North Railway alignment, 25.5 km (about 25%) of the alignment is located on bedrock at or near the surface. Much of the bedrock that is present is covered by a thin till veneer, such that it is not easily seen. Most of the railway manages to avoid ice-rich soils.

With respect to wildlife, the railway location minimizes impacts to wildlife, mainly because it is located within the same corridor as the existing Tote Road. Caribou trails have been mapped along the length of the Tote Road, and caribou crossings will be incorporated into the rail embankment at locations of caribou crossings. The North Railway does not interfere with any important bird areas.

...

A number of potential rock quarries have been identified along the North Railway, demonstrating an abundance of aggregate available. These potential quarries are illustrated on the attached diagram in yellow and would be located in close proximity to the North Railway and existing Tote Road. These are new borrow pits which would be created and used along the Tote Road alignment to support site preparation/construction of the proposed railway system.

As described in some detail during the NPC public hearing, significant proportions of the construction aggregate required will come from rock cuts within the alignment itself, rather than from quarries. Currently, it is estimated that the amount of required quarried material would be reduced as a result of cut and fill, however the volume is subject to change based on outcomes of the environmental assessment and detailed design.”⁷⁵

127. In the public hearing on December 4 and 5, 2017, Baffinland responded to concerns regarding dust as follows:

The dust you've correctly identified as being an issue. The zone that comes off right now from the tote road is extensive, and it is measured regularly by monitoring. The source from the dust in the road is largely from the wheels on the roadbed, and that's what is causing the liftoff. Then it gets taken by the wind. If we're able to proceed to the environmental assessment, we will be able to provide more details on the analysis, but our findings and what we would put forward, is that there will be a significant reduction in the dust as a result of the railroad,

⁷⁵ Baffinland, Written Response (December 19, 2017), Schedule A

because that would be six-seven trips a day, as opposed to the 100-plus trips by truck daily. Another source of dust is the crushing at the mine site. If, in fact, Phase 2 is approved, we're proposing to move that crushing down to Milne at the port and put it in an enclosed structure, which would also benefit cold weather operation and also reduce the amount of dust significantly.⁷⁶

ANALYSIS

128. The applicant must provide enough information for the Commission to decide whether to recommend the amendment under Appendix K. But Appendix K is not limited to only “new corridors”. Appendix K is planning guidelines used in assessing any new transportation / communications corridor proposal.
129. The preamble of Appendix K uses the words: “new transportation / communications corridor **proposal**”. That means Appendix K applies to a new proposal to construct a “transportation / communications corridor”, like adding a railway to a corridor where only a road is allowed. If Appendix K could only be applied to “new corridors” instead of “new proposals”, the Commission would need to make any party proposing a corridor for a single purpose prepare detailed information for all imaginable transportation and communications initiatives, which would likely be an unreasonable burden.
130. A corridor should minimize negative impacts on community lifestyles and great weight is given to the views and wishes of municipalities, including Pond Inlet and Igloolik. But the Commission does not have a mandate to make rules against hunting and using firearms in the corridor. Also, CPMs are developed and implemented by the GoC and QIA, not the Commission. The expert view of the NIRB based on its own public review of The Baffinland Phase 2 Amendment Application that Appendix K of the NBRLUP is met is also important.
131. As said above, even though the NBRLUP shows a transportation corridor in Appendix Q, this is a development of the corridor and Appendix K of the NBRLUP must be met. The Commission also believes the Baffinland Phase 2 Amendment Application to add a railway to the corridor meets the guidelines in Appendix K.
132. Looking at the information filed, even though the NIRB will look at more detailed information, the Commission agrees a 10 km corridor width asked for by Baffinland is reasonable in this case for land use planning. Baffinland identified the existing road and proposed railway facilities, physical and biophysical conditions including permafrost, bedrock, topography, the availability of granular supplies, and consideration of safe distances and crossings between the road and rail. A 10 km width should also give

⁷⁶ Nunavut Planning Commission, Transcript of NBRLUP Amendment #3 Public Hearing (December 4 – 5, 2017) at p. 32-33

enough room to modify the railway slightly if unforeseen alignment issue arise during construction.

133. The Commission looked at the proposed amendment in accordance with Appendix K and says:

- a. A 10 km width is reasonable for both road and rail in the corridor, including where they move apart (diverge).
- b. The NIRB will get more detailed information to ensure the project reduces negative impacts on community lifestyles, reflects land use capability including topography, soil, permafrost and wildlife, and availability of granular supplies.
- c. Adding a railway to the corridor will promote economic development and employment. Other impacts can be addressed by the NIRB and implementation of current CPMs by the GoC and QIA as required by section 3.3.7 of the NBRLUP, section 3.3.7 of the NBRLUP to prohibit construction and the operation of trucks and trains within caribou calving areas during calving season, as well as caribou water crossings.

134. Reading Appendix K to apply to new proposals for corridors, not only to new corridors, will promote healthy communities and encourage sustainable economic development. It will allow the Commission to review and approve corridors as they are proposed, without imposing unreasonable costs and expectations on private applicants to provide information on potential uses of a corridor that the applicant may have no intention of ever building.

135. The Commission recommends the revised amendment attached below be accepted to identify a terrestrial corridor for road and rail that's limited in width at all points to not greater than 10 km, as suggested by QIA.

Issue #3 – Consistency with Nunavut Agreement, NuPPAA, and BPPOG

FACTS

136. The GN's November 17, 2017 submissions says: "the proposed amendment is consistent with the Nunavut Land Claims Agreement, the Nunavut Planning and Project Assessment Act, and the NPC's broad planning policies, objectives and goals."⁷⁷

137. The GoC November 17, 2017 submissions says: "The GoC is of the view that the proposed amendment is consistent with Nunavut Agreement and Nunavut Planning and

⁷⁷ GN, Written Submissions (November 17, 2017) p. 2

Project Assessment Act as Appendix Q in the North Baffin Regional Land Use Plan has established a transportation corridor in the area.”⁷⁸

138. The Pond Inlet Committee says: “the proposed amendment may not be consistent with the Nunavut Planning and Project Assessment Act and the NPC’s broad planning policies, objective and goals”, and amendments may be required. However it takes the position that the Commission has not provided a map of the North Baffin Region indicating critical caribou habitat meaning it cannot fully answer the question posed. The Pond Inlet Committee also says “the NPC does not have a map for the North Baffin Region indicting critical caribou habitat” and “without this resource, it is difficult to make definitive statements about the extent to which changes to the North Baffin Region Land Use Plan impinge upon and might affect critical habit for caribou and other species.”⁷⁹
139. The Pond Inlet Committee submits that the Baffinland Phase 2 Amendment Application is not consistent with the purposes of a land use plan as set out in the NuPPAA and the Nunavut Agreement: “There is reason to believe that the proposed amendment does not meet the purpose of 47(a) “to protect and promote the existing and future well-being of the residents and communities of the designated area ...” and at 47(b) to “protect and restore the environmental integrity of the designated area ...”.”⁸⁰
140. Baffinland’s December 19, 2017 response says: “Baffinland submits that the proposed amendment to Appendix Q to provide for multi-modal transportation supports the primary purpose of land use planning in the North Baffin Region and is consistent with the Broad Planning Policies, Objectives and Goals (2007).”

ANALYSIS

141. Having considered all submissions and oral comments received in the public review, the Nunavut Agreement, the *NuPPAA*, and the broad goals objectives and policies of land use planning set out in the BPPOG as outlined above, the Commission considers it appropriate to make revisions to the proposed amendment. The *NuPPAA* and Nunavut Agreement say Inuit, residents and others should be able to actively participate in planning by the Commission,⁸¹ however initiatives like railways, pipelines and winter sea lifts were not previously reviewed. The Baffinland Phase 2 Amendment Application, without winter sea lifts, needs further revision to provide clarity on the uses of the corridor allowed for projects.

⁷⁸ GoC Written Submissions (November 17, 2017) p. 3

⁷⁹ Pond Inlet, Written Submissions (November 17, 2017), p. 18

⁸⁰ *Ibid.* p. 18.

⁸¹ See Nunavut Agreement s. 11.2.1

142. The BPPOG must say the Commission also consider economy and employment, and participants said the Mary River mine will benefit Pond Inlet and Nunavummiut. BPPOG Goal 4, “Building Healthy Communities” says land use planning must promote the “social, cultural, conservation and economic goals of the communities” and support “social and economic development initiatives”, and support “Inuit social and cultural needs and aspirations by providing special management to areas of archaeological, historical or cultural importance.” Goal 5 of the BPPOG, “Encouraging Sustainable Economic Development” says land use planning by the Commission “recognizes that the development of resources requires efficient and safe transportation infrastructure and corridors” and recognizes as a matter of policy that land use planning “takes into account Nunavummiut interests related to land, air and marine transportation corridors.”
143. As said before, the Commission does not agree that making Baffinland meet all of Appendices J and K at this time for all modes of transportation and communications is consistent with the goals of the BPPOG. That could result in significant uncertainty and delays for an applicant applying to amend the NBRLUP for one type of corridor by making the applicant also prepare information on all imaginable transportation and communications projects. However, it would also not be consistent with the Nunavut Agreement or BPPOG to say the corridor can be used for any transportation and/or communications project where the Commission has never received or publicly reviewed information on other initiatives.
144. The NBRLUP encourages multiple land uses subject to sustainable development,⁸² and it is generally advisable to group multiple land uses within a single corridor. The Commission believes adding a railway to the corridor in Appendix Q will bring economic and employment benefits, and that the NIRB will make sure the impacts of the project on the land, community travel and caribou and other wildlife are mitigated using more information, and recommends adding a new railway corridor to the existing terrestrial corridor in Appendix Q, with revised wording attached as Schedule “B” below.
145. The Commission recommends revisions to the amendment to say the corridor is for road, rail, and open water shipping, but no other modes of transportation or communications.

Issue #4 – Caribou Protection Measures

FACTS

146. In October 2017, QIA asked the Commission to consider CPMs. QIA requested BIMC provide information on how the railway relates to existing CPMs developed in 2014. QIA’s November 11, 2017 submission says that because the proposed railway activities will be different than the ERP project, the Commission should review Baffinland’s information to

⁸² NBRLUP, s. 1.2(vi)(iii)

determine whether the current CPMs need to be revised and submitted to the Commission prior to a conformity determination. QIA says the “amendment application by Baffinland should require a review and update of Caribou Protection Measures”⁸³.

147. Baffinland’s November 17, 2017 written submission says it reached agreement with QIA on CPMs in January 2014 and those measures “are directly related to and will continue to apply to any railway construction and operations with appropriate modifications.”⁸⁴ On December 19, 2017, Baffinland wrote in its response submission:

... 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.

148. The GoC notes that: “Making amendments to the Caribou Protection Measures in Appendix 1 in connection with the proposed amendment of Appendix Q and prior to a conformity decision is outside the scope of the amendment application by BIMC.”⁸⁵
149. The GN writes: “Appendix I does not require revisions in connection with BIMC’s amendment application to the NBRLUP, or prior to NPC’s issuance of a conformity decision regarding the proposed railway” and “it is the GN’s position that environmental assessment is the appropriate venue for determination of additional caribou protection measures.”⁸⁶
150. The Pond Inlet Committee’s November 17, 2017 written submission says: “We cannot determine if the caribou protection measures in Appendix I of the NBRLUP need to be revised in connection with the proposed amendment of Appendix Q. We therefore cannot give an opinion on what revisions are necessary or advisable. This again, because we have no protection map, produced by the NPC, to which to refer in making this

⁸³ QIA, Written Submissions (Nov 17 2017) at ¶ 28.

⁸⁴ Baffinland, Written Submissions (November 17, 2017), p. 3

⁸⁵ GoC, Written Submissions (November 17, 2017), p. 3

⁸⁶ GN, Written Submissions (November 17, 2017), p. 2-3, <NPC Filename: 2017-11-17 - GN Letter re Final List of Issues for NBRLUP Amend #3.pdf>

determination.”⁸⁷ QIA’s November 11, 2017 submissions say the Commission should review Baffinland’s information to determine whether the current CPMs need to be revised and submitted to the Commission prior to a conformity determination:

QIA believes the current CPM should be reviewed and amendments considered to address the Phase 2 proposal, with amendments submitted for consideration by NPC prior to a conformity decision.

QIA submits that as part of the review process NPC should also require confirmation that the existing CPM are currently being implemented prior to making any decision on conformity.⁸⁸

151. The NIRB requests guidance from the Commission giving “direction regarding the implementation of the current CPMs and the extent to which these CPMs should be implemented and applicable to the proposed activities, works and undertakings in the Phase 2 Development Project Proposal.”⁸⁹

ANALYSIS

152. The Commission agrees that CPMs are important, but the Commission doesn’t implement CPMs except to require development activities be prohibited in caribou calving areas during calving season and caribou water crossings. The Commission agrees that consideration of amendments to the CPMs is outside the scope of this public review of the Baffinland Phase 2 Amendment Application. But to help QIA and the NIRB as requested, the Commission gives the following recommendations on this issue.
153. As sections 3.4.4 and 3.4.5 of the NBRLUP say, above, CPMs are developed refined and implemented “based on those suggested in Appendix I”, but this is not the role of the Commission. QIA and the GoC develop and implement caribou protection measures based on Appendix I of the NBRLUP. The NBRLUP suggests QIA “attach caribou protection measures to permits it grants to companies seeking to work on its lands.”⁹⁰ If anyone affected by the NBRLUP thinks Appendix I should be updated, or the NBRLUP amended to include more detailed CPMs or caribou habitat, it is open to them to propose a new amendment.
154. The Commission is concerned that adding a railway to the existing corridor will have negative impacts on caribou and hunting, but it is for the NIRB to deal with project impacts. The Commission understands that trains are long and cannot stop quickly. While

⁸⁷ Pond Inlet, Written Submissions (November 17 2017), p. 19.

⁸⁸ QIA, Written Submissions (November 17, 2017) ¶31 – 32.

⁸⁹ NIRB Letter November 30, 2017, p. 5.

⁹⁰ NBRLUP, p. 39.

- Baffinland said the railway would reduce dust so adding a railway to the corridor would reduce impacts, it has not clearly said it will stop using trucks to haul ore once the railway is operational. The Commission recommends that the NIRB review the proposed railway to ensure mitigation measures minimize impacts of dust and the proposed railway on hunters' access to and across the Tote Road and on caribou, and that any impacts be considered together with the impacts of Baffinland's currently approved use of the road.
155. Also, the Commission heard the railway may go through a caribou calving area where it diverges from the road alignment. Under CPMs based on Appendix I the Commission expects Baffinland would not be able to construct or operate the railway in calving season when caribou are present. The NBRLUP recommends the Commission, Nunavut Wildlife Management Board, NIRB, GoC (INAC), QIA Inuit land managers, and the GN Department of Sustainable Development work together to monitor CPM effectiveness and compliance and determine if special protected areas for caribou are needed. The Commission recommends this group discuss adding caribou protected areas to the NBRLUP while the DNLUP is being developed.
156. The Commission wants to make clear the revised amendment does not place any new restrictions on hunting and shooting itself. Hunting and shooting cannot happen if it risks lives and safety of users of the road and railroad according to other laws, not the NBRLUP. Inuit hunting should be affected as little as possible by a project approved by the Commission. The Commission recommends that the NIRB ensure effective CPMs are in place and fully implemented in respect of any and all projects within the corridor, and to ensure the least possible impact on travel by hunters, including by skidoo and dog sled.

Issue #5 – Multi-Modal Uses

FACTS

157. Baffinland says in the December 19, 2017 response: “the proposed amendment to Appendix Q to provide for multi-modal transportation supports the primary purpose of land use planning in the North Baffin Region and is consistent with the Broad Planning Policies, Objectives and Goals (2007).”
158. The GN says in written submissions on November 17, 2017 that “generally, creating transportation corridors for any type or mode of transportation uses would be appropriate.”⁹¹
159. The GoC says in its view “this is already the planning approach evident in the North Baffin Land Use Plan... the plan is designed to facilitate regional planning that looks for opportunities to gather together transportation, communication, and transmission potential

⁹¹ GN, Written Submissions (November 17, 2017), p. 3

- in a combined corridor, where it makes sense to do so. In most cases, including the Appendix Q corridor, a multi-modal and multi-user corridor is preferable to a project-specific corridor.”⁹² The GoC’s proposed wording for an amendment to Appendix Q suggests including a “pipeline” in the corridor as a conforming use.
160. The Pond Inlet Committee’s submission says: “The NPC should not create corridors that allow proponents to carry out any type or “mode” of transportation project, and should not avoid restricting transportation to any project proponent”. To put it another way, the Pond Inlet Committee takes the position that the Commission should be willing to restrict transportation to a single project proponent, and furthermore says: “We are not convinced, given the economic realities under which Baffinland is operating, the need to increase the volume of production, as indicated by the Phase 2 proposal and therefore the need to ship increased volumes of ore in general and at critical times dictated by the price of iron ore that a proposal for winter shipping will not re-emerge.”⁹³ The Commission understands the Pond Inlet Committee to say the NBRLUP should not be amended solely based on project proposals which may be unpredictable, but rather should look at the suitability of multiple uses of a corridor from a land use planning perspective, including for proposals that are not presently before the Commission but which may be in the future, such as winter shipping.
161. QIA says that: “While QIA is not opposed to a ‘multi-modal’ concept in general, consideration must be given to whether the existing public easement created by the Nunavut Agreement over IOL for a public road is consistent with the specific mixed use - in this case, public use of a roadway, active mine use of the same roadway and the construction and use of a railway within the same general area.”⁹⁴ As noted above, QIA’s October 2 2017 submissions took the position an amendment should not result in foregoing the need to reassess a project if the use of the corridor greatly intensifies, giving ice breaking as an example.
162. As noted above, QIA’s October 2 submissions also say the NIRB reviews specific details of project proposals, but “the nature and extent of permitted uses and activities ...requires clarification at this planning stage.” QIA’s November 2017 written submission also says Baffinland hadn’t given enough information “relating to the proposed railway use, the effect of a railway on the scope, width and size of the transportation corridor and the health and safety implications of permitting a multi-modal use of both road and rail in close proximity

⁹² GoC, Written Submissions (November 17, 2017), p. 3-4

⁹³ Pond Inlet, Written Submissions (November 17 2017), p. 19-20.

⁹⁴ QIA, Written Submissions (November 17, 2017), ¶34

of one another”.⁹⁵ QIA also says “clearly identifiable limitations on uses within an existing transportation corridor should be established.”⁹⁶

163. After the NIRB held a public review of the amendment application it asked the Commission for guidance:

“Recognizing the Commission’s central role under Appendix Q of the NBRLUP in terms of defining the nature and extent of permitted uses within existing transportation corridors, the NIRB, the Proponent, and all parties to any subsequent NIRB assessment would benefit from guidance regarding the definition and limits on permitted uses in this context...”⁹⁷

ANALYSIS

164. Participants took different positions on whether the corridor in Appendix Q should be interpreted to allow all modes of transport and communications (multi-modal uses). The Commission thinks it is advisable to approve corridors for multiple uses where appropriate. However, based on the facts in this case, the Commission does not interpret Appendix Q to already allow all types of transportation or communications projects, and does not recommend Appendix Q be amended to allow all uses.
165. The Commission heard some participants say there should not be any restrictions on the use of the corridor in Appendix Q of the NBRLUP, and that other modes of transportation, including pipelines, should be conforming uses of the corridor. But some participants noted in their submissions no information on other modes of transportation has been submitted to the Commission. The Commission does not interpret the existing transportation corridor in Appendix Q as a corridor for all uses, and doesn’t have sufficient evidence to recommend that all possible uses should be included.
166. The GoC’s proposed wording for Appendix Q suggests adding: “sections 3.5.11 and 3.5.12 ... are considered satisfied.” The Commission has revised the proposed amendment to say these sections are satisfied for roads, railways, and open water shipping and navigation in the corridor, but not for other modes of transportation or communication. If a proponent wants to develop a corridor for road, rail or open water shipping, as long as other conformity requirements are met, they can request a positive conformity determination. If another mode of transportation or communications that hasn’t been publicly reviewed is proposed, an Amendment Application is needed or a negative conformity determination may be given.

⁹⁵ QIA, Written Submissions (November 17, 2017), ¶¶13, 25, also see Letter from NIRB Executive Director (November 30, 2017) p. 3

⁹⁶ QIA, Written Submissions (November 17, 2017), ¶41

⁹⁷ NIRB Letter November 30, 2017) p. 5.

167. The Commission believes infrastructure development in Nunavut is important to create employment and sustainable economic development. The Commission can recommend corridors for multi-modal uses, or only for modes of transport and/or communication proposed. The Commission does not recommend a multi-modal corridor this time, and additional public reviews may be needed to add other initiatives not yet reviewed in the public with active and informed participation of Inuit and other residents affected by the NBRLUP.

Issue #6 – Compatibility with Easements Created by the Nunavut Agreement

FACTS

168. The GN's November 17, 2017 submissions says: "consideration of the Nunavut Land Claims Agreement Schedule 21-2 easement is not relevant to the application. In the alternative that it is relevant, the GN submits that the easement and the proposed amendment are compatible." ⁹⁸

169. The GoC's November 17, 2017 submissions says:

"the proposed amendment does not interfere with the existing public right of access for the purpose of the transportation to the Milne Inlet Tote Road easement under the Nunavut Agreement" and "the nature of the proposed 'multi-modal' uses are compatible with linear infrastructure within the corridor described in Appendix Q together with a public access easement. The project-specific assessment of impacts of any specific project on other users or potential users of these lands would be done through the impact assessment process." ⁹⁹

170. QIA's November 17, 2017 submissions says:

"While QIA is not opposed to a 'multi-modal' concept in general, consideration must be given to whether the existing public easement created by the Nunavut Agreement over IOL for a public road is consistent with the specific mixed use - in this case, public use of a roadway, active mine use of the same roadway and the construction and use of a railway within the same general area." ¹⁰⁰

171. The Pond Inlet Committee says Inuit use of the Milne Inlet Tote Road is documented, and that a railway will be a significant barrier to travel. It says that road and rail are not compatible uses within the corridor together with the public easement. ¹⁰¹

⁹⁸ GN, Written Submissions (November 17, 2017) p. 3

⁹⁹ GoC, Written Submissions (November 17, 2017), p. 4

¹⁰⁰ QIA, Written Submissions (November 17, 2017), ¶34

¹⁰¹ Pond Inlet, Written Submissions (November 17 2017), p. 20.

172. After the Commission's public review of the ERP Amendment, on the issue of the Milne Inlet Tote Road as an easement the April 2, 2014 decision said:

...[T]he Amendment Applicant's submissions also refer to the public right of access to the Milne Inlet Tote Road on Inuit Owned Lands as recognized in Part 4 of Article 21 of the NLCA, ... The NPC's mandate as provided by the NLCA requires the NPC to perform conformity determinations using the approved land use plans under section 11.5.10, and moreover requires that "special attention" be devoted to "protecting and promoting the existing and future well-being of Inuit and Inuit Owned Lands" as part of the primary purpose of land use planning under section 11.2.1 of the NLCA. The NPC does not consider the Milne Inlet Tote Road as exempt from the NPC's mandate, whether to consider the conformity of "project proposals" including physical works and physical activities, or in considering land use plan amendments, as this would defeat the purpose of devoting special attention to Inuit Owned Lands, particularly where physical works and activities may have adverse impacts on Inuit and "lands" including water and resources including wildlife. ...¹⁰²

173. In the public hearing on December 4 and 5, 2017, Baffinland answered questions about crossings between the road and rail as follows:

Baffinland does not believe - that we will interfere with any rights of individuals on the road. There are between 7 and 9 of what we would call level crossings where a rail would cross the existing tote road. The transit time of a rail through a crossing would be a matter of minutes, several minutes. The procedures for level crossings outlined in the final Environmental Impact Statement will be revisited and informed by consultation throughout the course of the environmental assessment.¹⁰³

ANALYSIS

174. The public right of access is relevant to the amendment because the Tote Road is used for community travel and harvesting purposes. The Commission understands that even though the railway will cross the road and may have some impact on public use, the corridor can be designed to be used for both the public road and the proposed railway. The impacts of the project will be reviewed by the NIRB where more detailed information on the design of the railway will be available.

¹⁰² See NPC Reasons for Decision from Public Review: NBRLUP Amendment Application (April 2, 2014), ¶ 74
Filename: DFO NU 07 0050 BIMC ERPP APR 14 AMDCS.pdf>

¹⁰³ Nunavut Planning Commission, Transcript of NBRLUP Amendment #3 Public Hearing (December 4 – 5, 2017), p.

Letters Received after Public Hearing December 4 – 5, 2017, Pond Inlet, NU

175. After the public hearing, the Commission got general letters of support for the amendment from different individuals and entities. These submissions were not organized issue by issue, but were taken into consideration in this report and the Commission's deliberations:

- a. Deborah Qanatsiaq, Hall Beach: "I am writing this letter to express my support for Baffinland Iron Mine to move forward with the NIRB Hearing on the proposed railway."¹⁰⁴
- b. Savik Enterprises, Igloolik: "we support the amendment presented to NPC and respectfully request that it be approved so we can move this critical project forward."¹⁰⁵
- c. Loseosie Paneak, Clyde River, Elder: Baffinland Iron Mine: "I am writing a letter of support for Baffinland Iron Mines for the Phase 2 project which includes the Railroad from Mary River to the Milne Port because, I feel that it has benefited our Community and the other 4 Communities and Iqaluit and the Inuit who live all over Canada, who works for BIM, QIL and Nuna Logistics."¹⁰⁶
- d. George Iqalukjuak, Baffinland Community Liaison Officer, Clyde River: "I am writing this letter of support for BIM's Phase II & railroad project. Due to lack of jobs and training in the community, BIM is one of the main employer for the community of Clyde River. I encourage Nunavut Planning Commission to approve the requested railroad project. Without the Mary River project, the families of over 30 employees would have to go back to Income Support."¹⁰⁷
- e. Irene Satuqsi, Hall Beach: "I am writing this letter to I am in Supportive of Baffinland's Project moving to the NIRB process as having to work at Mary River has made me improve personally. I am proud to be working at the Mary River site because I can talk to my friends and heal with them as well on a personal level. Financially, it has help my family of 6 to combat the food insecurities that we use to face when I was unemployed. I would be disappointed if anything happened to the project as it's my source of Income for my family."¹⁰⁸
- f. Ian Tigullaraq, Clyde River: "I'm writing to give support to Baffinland Iron Mine project phase 2 to build railway and mine expansion. Baffinland has provided jobs

¹⁰⁴ <NPC Filename: 2017-12-08 - D.Qanatsiaq Letter of Support re NBRLUP Amendment 3

¹⁰⁵ <NPC Filename: 2017-12-08 - Savik Enterprises Ltd. Letter of Suppoer re NBRLUP Amendment 3

¹⁰⁶ <NPC Filename: 2017-12-10 - L.Paneak Letter of Support re NBRLUP Amendment 3

¹⁰⁷ <NPC Filename: 2017-12-11 - G.Iqalukjuak BCLO Clyde River Letter of Support re NBRLUP Amendment 3

¹⁰⁸ <NPC Filename: 2017-12-11 - I.Satuqsi Letter of Support re NBRLUP Amendment 3

for Clyde River and the community's closest to the mine and they treat the land/locals with respect. I give full support to Phase 2 of BIM project.”¹⁰⁹

- g. Mayor of Igloolik: “We are supportive of Baffinland's project moving to the Nunavut Impact Review Board.”¹¹⁰ No resolution by the municipal council was provided.
- h. NWT & NU Chamber of Mines: “On behalf of the minerals industry in Nunavut, we are writing to express our support for the Amendment to the North Baffin Regional Land Use Plan (LUP) being proposed by Baffinland Iron Mines Limited. The Chamber strongly recommends that the Nunavut Planning Commission (NPC) grant Baffinland the land use plan amendment so that the phase 2 proposal can proceed to the environmental assessment.”¹¹¹ The Chamber further submits:

...in light of rail making the mine more sustainable economically, the NPC should support the use of rail at Mary River given the following additional considerations:

- Rail emits around half as much CO₂ per tonne of material transported compared to truck;
- Less Volatile Organic Compounds per tonne of material transported compared to truck;
- Far less fuel used per tonne of material transported compared to truck, which reduces fuel transport, storage, and overall risk of spills;
- Rail transport is much quieter than road transportation, a key factor in mitigating wildlife effects;
- Rail traffic is statistically safer than truck transportation despite high profile derailments.

The NPC can protect and promote the well-being of Nunavummiut by amending the LUP to allow for rail.

There is also support for the amendment from Indigenous and Northern Affairs and the GN. The Hunters and Trappers in Pond Inlet have stated they are not opposed to the amendment and committed to participate in the environmental assessment process. The Qikiqtani Inuit Association

¹⁰⁹ <NPC Filename: 2017-12-11 - I.Tigullaraq Letter of Support re NBRLUP Amendment 3

¹¹⁰ <NPC Filename: 2017-12-11 - Municipality of Igloolik Letter of Support re NBRLUP Amendment 3

¹¹¹ <NPC Filename: 2017-12-11 - NWT&NU Chamber of Mines, Letter of Support re NBRLUP Amendment 3

made reference that NPC can find enough information to proceed with the amendment. Finally, Baffinland stated that there is no evidence provided to prevent NPC from proceeding with the amendment. As has been evident in all of the submissions to the NIRB, a railway to Milne Inlet has always been contemplated. This alternative transportation corridor may be the most economical transportation corridor for the Mary River Project to get the iron ore to the coast for shipping, and cannot be ignored.

- i. Qikiqtani Industry Ltd. (QIL): “QIL understands that concerns have been raised about the proposed amendment to the North Baffin Regional Land Use Plan to permit the use of rail in the Tote Road Corridor; and as long as these concerns are fully and satisfactorily addressed through an environmental assessment of Baffinland's Phase 2 Proposal by the Nunavut Impact Review Board, QIL does not oppose the proposed amendment to the North Baffin Regional Land Use Plan.”¹¹²
- j. Robert Aingilliq Tookoome: “I support Baffin land's wish to move to the NIRB process as it will have a positive impact on the five North Baffin communities and Iqaluit if the process moves on. It will create jobs and develop skills for Inuit of the area that is desperately needed in the communities.”¹¹³

176. The Resolute Bay Hunters & Trappers Association wrote December 1, 2017 in support of the Mittimatalik HTO “not to build a rail road and shipping year round Because of the harm to the animals”. Hall Beach HTO (in same document, but a different letter) also “support Pond Inlet to stop Baffinland to expand their Rail Road project from Mary River to Milne Inlet”.

SUBMISSIONS ON WORDING FOR A REVISED AMENDMENT

177. Baffinland included wording to amend Appendix Q of the NBRLUP in the Phase 2 Amendment Application “to amend Appendix Q to provide for transportation by rail through the corridor.”¹¹⁴ Baffinland also wanted winter sea lifts of freight added to Appendix Q, but after participants had concerns about winter sea lifts of freight,¹¹⁵ on October 24, 2017 Baffinland removed the request to allow winter re-supply.

178. QIA recommended¹¹⁶ changes to Baffinland's proposed wording to include:

- a. limiting the width of the corridor to 10 km;

¹¹² <NPC Filename: 2017-12-12 - Qikiqtani Industry Ltd. Comments re NBRLUP Amendment 3

¹¹³ <NPC Filename: 2017-12-12 - R.Tookoome, Letter of Support re NBRLUP Amendment 3

¹¹⁴ Baffinland Phase 2 Amendment Application

¹¹⁵ See e.g. QIA, Written Submissions (October 2, 2017)

¹¹⁶ QIA, Written Submissions (November 17, 2017)

- b. additional clarification regarding activities that would not require further review or amendment;
- c. clarification that “activities within the transportation corridor must conform to applicable provisions of the NBRLUP, including Appendix I and Mary River Caribou Protection Measures, as amended.”;

179. GoC recommended¹¹⁷ changes to Baffinland’s proposed wording to include:

- a. The title of the corridor has been revised to better represent a multi-modal and multi- user approach for the corridor.
- b. A corridor width has been included to better define the corridor. A 10 Kilometer width was selected based on the definition of Linear Infrastructure Corridor in the draft 2016 Nunavut Land Use Plan.
- c. Wording has been provided to better define permitted uses and components of a multi- modal corridor. The wording is based on the draft Amendment 1 and approved Amendment 2 to the North Baffin Regional Land Use Plan to the greatest degree while maintaining the GoC’s interests.
- d. A statement has been included in section ‘2.3 Implementation and Interpretation’ of the Amendment to confirm sections 3.5.11 and 3.5.12 of the North Baffin Regional Land Use Plan have been met.

180. During the public hearing on December 4 and 5, 2017, the GN said:

The Government of Nunavut has not raised any major concerns regarding the proponent’s revised Appendix Q wording for the amendment to the North Baffin Regional Land Use Plan. We have reviewed the submissions from other parties, and in particular in Canada’s submission, we see the benefit of proposed additional wording that would confirm that Appendix Q is a multimodal transportation corridor.¹¹⁸

181. To summarize, participants suggested the Commissioners make the following revisions to the proposed amendment if it is to be recommended for approval:

- a. GoC suggest changing the title of the amendment, and name of the corridor, to make it more general
- b. Baffinland suggest wording to specify rail is included

¹¹⁷ GoC Submission Nov17 #2

¹¹⁸ Nunavut Planning Commission, Transcript of NBRLUP Amendment #3 Public Hearing (December 4 – 5, 2017) at p. 92-93

- c. Baffinland suggest adding reference to Phase 2 Expansion Proposal
- d. QIA suggest explicitly noting that the corridor excludes winter shipping
- e. QIA/GoC suggest limiting the width of the terrestrial component to 10km
- f. GoC/GN propose a revised description of terrestrial component that includes additional uses such as pipelines and airstrips
- g. QIA propose wording to specify that any future additional uses would be subject to any restrictions included in the amendment.
- h. GoC suggest specifying that 3.5.11 and 3.5.12 are satisfied for this corridor

ANALYSIS

182. To make appropriate revisions to the amendment, attached in Schedule “B”, the Commission looked at wording participants suggested and comments and submissions from the public review and hearing in Pond Inlet.
183. The Commission updated the preamble to Appendix Q to say the revised recommended amendment will add new permitted uses – a railway – and clarify permitted uses of the corridor. References to project proposals have been removed in favour of including express terms in the wording of the appendix itself.
184. The Commission agrees to update the title of the corridor to “Mary River Transportation Corridor”, the amendment number, and the location in the NBRLUP. Amendment number 1 was not approved, and the revision will address the absence of an Appendix “P” in the current NBRLUP – the original Appendix Q discussed in this public review will be removed entirely and replaced with the revised amendment. The Commission generally agrees with the GoC’s wording to describe railways and roads within the corridor, and that seasonal airstrips/icestrips are reasonable to include as permitted uses within the corridor. The Commission recommends the corridor expressly be used for road, rail, and open water shipping and navigation, but not other uses such as pipelines and winter sealifts.
185. The Commission recommends removing repeated text in section 2.2.1 of Appendix “Q”: “and generally described as the lands located North of Mary River, North Baffin Island, 1000km North of Iqaluit,” and corrected a typo in the coordinates for Milne Port. The Commission also revised the amendment to say the terrestrial corridor is “composed wholly of” the road, rail, and seasonal airstrips/icestrips to mean additional transportation and/or communications corridor initiatives have not been approved as permitted uses within the corridor.
186. Many participants made submissions regarding winter sealifts and requested the Commission clarify the marine component of the corridor does not permit winter sea lifts.

- QIA asked the amendment say it excludes winter shipping through ice. The Commission revised the amendment to say the marine component “does not include winter shipping through ice”. The Commission’s revised wording means proponents will still be able to propose projects involving winter shipping through ice to be assessed against the NBRLUP’s conformity requirements. This is a clarification of the existing Amendment “Q” as the Commission interpreted it in its Negative Determination in respect of Baffinland’s Mary River Phase 2 project, and is not a new prohibition.
187. The NIRB says Baffinland provided sufficient information to meet Appendices J and K, but said additional information could be asked for. Baffinland gave that information on December 19, 2017. The Commission has determined it is necessary in this case to provide a corridor width. There is sufficient information to do so, and accepts QIA’s recommendation that the corridor be limited to not greater than 10 km in width at all points in order to accommodate both road and rail including where the rail diverges from the road.
188. QIA suggested the Commission clarify incidental activities and regular maintenance of infrastructure and activities in the corridor not require further review “so long as otherwise not contrary to the terms of this Amendment”. The Commission accepts QIA’s wording. Regarding QIA’s suggestion that CPMs and Appendix I be added to Appendix Q, the Commission notes it doesn’t implement CPMs itself. However, the Commission used QIA’s suggestion, with changes to say that projects in the corridor must conform to all applicable provisions of the NBRLUP – including any prohibitions on development activities within calving areas and in water crossings. It also means, as the Commission’s Negative Determination previously decided, land values and concerns identified in Areas of Importance in Appendix G, and access to those areas must be conserved,¹¹⁹ and the Code of Good Conduct in Appendix H of the NBRLUP are read together with section 3.3.1 requiring “land users to time their operations to avoid harm to wildlife and wildlife habitat and damage to community travel routes.”¹²⁰
189. The GoC submits the amendment be revised to say sections 3.5.11 and 3.5.12 have been satisfied for the purpose of the corridor. The Commission does not agree with that submission. However, the Commission does recommend saying that sections 3.5.11 and 3.5.12 of the NBRLUP are satisfied for the purpose of road, rail, and open water transportation projects so no new applications to amend the NBRLUP for those modes of transportation are needed.

¹¹⁹ Nunavut Planning Commission, Conformity Determination by the Commissioners, Re: Mary River Project Phase 2, NWB File: 2AM MRY1325; DFO File: NU-07-HCAA-CA7-0050; NIRB File: 08MN053 (April 8, 2015), cited in QIA, Written Submissions (November 17, 2017) at ¶¶ 27 – 31.

¹²⁰ *Ibid.* at ¶¶ 32 – 38.

190. Other transportation and/or communications initiatives, such as pipelines and winter sea lifts (icebreaking) have not been publicly reviewed and are not included in the current amendment. However these are also not expressly excluded, so a proponent may still propose a pipeline or icebreaking project, and a further plan amendment may be required or the project may conform or get a negative conformity determination. The Commission notes this will help meet the five goals of the BPPOG and make sure engagement and respect for traditional lifestyles occurs.

191. The Commission attaches a revised proposed amendment as Schedule “B” to this report, and recommends the revised amendment be accepted in whole. A summary of recommendations made in this report is attached as Schedule “C”.

Signed on behalf of the Commission this 18th day of March, 2018

A handwritten signature in black ink, appearing to read 'A. Nakashuk', written in a cursive style.

Andrew Nakashuk,
Chairperson
Nunavut Planning Commission

SCHEDULE "A": LIST OF RELEVANT DOCUMENTS AND CORRESPONDENCE

1. April 2, 2014 NPC NBRLUP Amendment Application Reasons for Decision from Public Review
2. March 5, 2015 NPC Conformity Officer, Negative Conformity Determination Recommendation
3. April 8, 2015 NPC Commissioners Negative Conformity Determination
4. February 3, 2017, Baffinland Project Proposal for the Mary River Phase 2 Expansion Project
5. 2017-02-03 - NBRLUP Amend#3- Mary River Phase II Expansion - BIMC Phase 2 Project Proposal.pdf
6. 2017-02-03 - NBRLUP Amend#3- Mary River Phase II Expansion - NPC Application Form 148420.pdf
7. 2017-03-06 - NBRLUP Amend#3-Mary River Phase II Expansion -NPC Letter re 148420 Mary River Phase 2 Expansion.pdf
8. 2017-03-14 -NBRLUP Amend#3-Mary River Phase II Expansion- ᐱᓕᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ 2 ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ
ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ NBRLUP-ᓴᓴᓂᑦ ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ 2 ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ ᐸᓚᓴᓂᑦ
ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ
ᐸᓚᓴᓂᑦ ᐅᓄᓗᓂᑦ
9. 2017-03-17 -NBRLUP Amend#3-Mary River Phase II Expansion- Proposal for Amendment to the NBRLUP.pdf
10. 2017-05-09 -NBRLUP Amend#3-Mary River Phase II Expansion- BIMC Ltr to NPC Re Proposed amendment to the NBRLUP.pdf
11. 2017-05-17 - NBRLUP Amend#3-Mary River Phase II Expansion - NPC Update re BIMC Amendment Request.pdf
12. 2017-06-02 - NBRLUP Amend#3-Mary River Phase II Expansion -BIMC response to NPC letter May 17, 2017.pdf
13. 2017-06-30 - NBRLUP Amend#3-Mary River Phase II Expansion - BIMC Ltr to INAC & NPC re Amendment Proposal.pdf
14. 2017-07-04 - NBRLUP Amend#3-Mary River Phase II Expansion - NPC Response to BIMC re Amendment Proposal June 30, 2017.pdf
15. 2017-07-20 - NBRLUP Amend#3-Mary River Phase II Expansion - NTI&QIA Ltr to NPC & INAC re BIMC Amendment Proposal ENG-INUK.pdf
16. 2017-07-27 - NBRLUP Amend#3-Mary River Phase II Expansion - NPC response to NTI&QIA joint Ltr re BIMC Amendment Application July 20, 2017.pdf
17. 2017-07-28 - NBRLUP Amend#3- Mary River Phase II Expansion-Letter from GN to NPC re BIMC Amendment Application.PDF
18. 2017-08-04 - NBRLUP Amend#3-Mary River Phase II Expansion- INAC Ltr to NPC re Supplementary Funding.pdf
19. 2017-08-28 - NBRLUP Amend#3- Mary River Phase II Expansion-Report of Executive Director re NBRLUP Amendment Application.pdf
20. 2017-08-28 - NBRLUP Amend#3- Mary River Phase II Expansion-Report of Executive Director re NBRLUP Amendment Application_INUK.pdf
21. 2017-08-30 - NBRLUP Amend#3- Mary River Phase II - NPC Letter to QIA&NTI re BIMC Amendment Application July 20, 2017.pdf

22. 2017-08-30 - NBRLUP Amend#3- Mary River Phase II - NPC Response to GN Ltr re BIMC Amendment Application July 28, 2017.pdf
23. 2017-08-30 - NBRLUP Amend#3- Mary River Phase II - NPC Response to INAC re BIMC Amendment Application Aug 4, 2017.pdf
24. 2017-08-30 - NBRLUP Amend#3- Mary River Phase II Expansion- NPC Public Review Template for Comments & Submissions.docx
25. 2017-08-30 - NBRLUP Amend#3- Mary River Phase II Expansion- NPC Public Review Template for Comments & Submissions_INUK.PDF
26. 2017-08-30 - NBRLUP Amend#3- Mary River Phase II Expansion-Notice re BIMC Amendment Proposal 2017 INUK.pdf
27. 2017-08-30 - NBRLUP Amend#3- Mary River Phase II Expansion-Notice re BIMC Amendment Proposal 2017.pdf
28. 2017-09-08 - NBRLUP Amend#3- Mary River Phase II Expansion-Letter from QIA to BIMC re Amendment Proposal Request for Clarifications INUK.pdf
29. 2017-09-08 - NBRLUP Amend#3- Mary River Phase II Expansion-Letter from QIA to BIMC re Amendment Proposal Request for Clarifications.pdf
30. 2017-09-26 - NBRLUP Amend#3- Mary River Phase II Expansion- BIMC Response to QIA Request for Clarification re NBRLUP Amendment #3 INUK.pdf
31. 2017-09-26 - NBRLUP Amend#3- Mary River Phase II Expansion- BIMC Response to QIA Request for Clarification re NBRLUP Amendment #3.pdf
32. 2017-09-26 - Pond Inlet CLARC Submission re NBRLUP Amendment #3.pdf
33. 2017-09-27 - Pond Inlet Hamlet Submission re NBRLUP Amendment #3.pdf
34. 2017-09-29 - Mittimatalik (Pond Inlet) HTO Submission re NBRLUP Amendment #3 ENG INUK.pdf
35. 2017-10-02 - GN Submission re NBRLUP Amendment #3.PDF
36. 2017-10-02 - GoC Submission re NBRLUP Amendment #3.pdf
37. 2017-10-02 - QIA Submission re NBRLUP Amendment #3 INUK.pdf
38. 2017-10-02 - QIA Submission re NBRLUP Amendment #3.pdf
39. 2017-10-02 - WWF Submission re NBRLUP Amendment #3.pdf
40. 2017-10-02- Kaujak K. Submission re NBRLUP Amenment #3.pdf
41. 2017-10-04 - BIMC Ltr to NPC re Submissions for NBRLUP Amendment #3.pdf
42. 2017-10-04 - BIMC Ltr to NPC re Submissions for NBRLUP Amendment #3.pdf
43. 2017-10-12 NPC Notice re Public Hearing for NBRLUP Amendment and Draft Agenda.pdf
44. 2017-10-12 NPC Notice re Public Hearing for NBRLUP Amendment and Draft Agenda_INUK.pdf
45. 2017-10-17 GN Comments re NBRLUP Amendment Public Hearing & Draft Agenda.pdf
46. 2017-10-17 GoC Comments re NBRLUP Amendment Public Hearing & Draft Agenda.pdf
47. 2017-10-17 QIA Comments re NBRLUP Amendment Public Hearing & Draft Agenda.pdf
48. 2017-10-23 NPC Ltr to Participants re Amendment Hearing Process.pdf
49. 2017-10-23 NPC Ltr to Participants re Amendment Hearing Process_INUK.pdf
50. 2017-10-24 - NBRLUP Amend#3- Mary River Phase II Expansion - BIMC Amendment Application Revision.pdf
51. 2017-10-25 GoC Comments to proposed list of issues.pdf
52. 2017-10-25 QIA Comments to proposed list of issues.pdf
53. 2017-10-25 QIA Comments to proposed list of issues_INUK.pdf
54. 2017-10-26 - BIMC Response to QIA Information Request INUK.pdf

55. 2017-10-26 - BIMC Response to QIA Information Request.pdf
56. 2017-10-26 QIA NBRLUPAmendment Information Request ENG.pdf
57. 2017-10-26 QIA NBRLUPAmendment Information Request_INUK.pdf
58. 2017-10-27 NPC ltr re Hearing Process Final List of Issues and Agenda.pdf
59. 2017-10-27 NPC ltr re Hearing Process Final List of Issues and Agenda_INUK.pdf
60. 2017-10-27 NPC Notice re Revised Dates for BIMC Amendment Hearing.pdf
61. 2017-10-27 NPC Notice re Revised Dates for BIMC Amendment Hearing_INUK.pdf
62. 2017-11-06 - BIMC Response to QIA Information Request- Appendix C.PDF
63. 2017-11-06 - BIMC Response to QIA Information Request- Cover Letter INUK.pdf
64. 2017-11-06 - BIMC Response to QIA Information Request- Cover Letter.pdf
65. 2017-11-06 - BIMC Response to QIA Information Request- Item 1 Part 1 Intro and Appendix A Table of Contents.pdf
66. 2017-11-06 - BIMC Response to QIA Information Request- Item 1 Part 2 Appendix A Table of Contents.pdf
67. 2017-11-06 - BIMC Response to QIA Information Request- Item 1 Part 3 Appendix A Table of Contents.pdf
68. 2017-11-06 - BIMC Response to QIA Information Request- Item 11B Appendix B Table of Contents.pdf
69. 2017-11-06 - BIMC Response to QIA Information Request- Item 12-13A Part 1 Appendix B Table of Contents.pdf
70. 2017-11-06 - BIMC Response to QIA Information Request- Item 13A Part 2 Appendix B Table of Contents.pdf
71. 2017-11-06 - BIMC Response to QIA Information Request- Item 13A Part 3 Appendix B Table of Contents.pdf
72. 2017-11-06 - BIMC Response to QIA Information Request- Item 13B-14 Appendix B Table of Contents.pdf
73. 2017-11-06 - BIMC Response to QIA Information Request- Item 1-6 Appendix B Table of Contents.pdf
74. 2017-11-06 - BIMC Response to QIA Information Request- Item 2 Appendix A Table of Contents.pdf
75. 2017-11-06 - BIMC Response to QIA Information Request- Item 7 Part 1 Appendix B Table of Contents.pdf
76. 2017-11-06 - BIMC Response to QIA Information Request- Item 7 Part 2 Appendix B Table of Contents.pdf
77. 2017-11-06 - BIMC Response to QIA Information Request- Item 8-11A Appendix B Table of Contents.pdf
78. 2017-11-08 - Municipality of Pond Inlet Letter re Mary River Phase 2 Review Committee for Public Hearing.pdf
79. 2017-11-17 - BIMC Response to NIRB's Request for Comments.pdf
80. 2017-11-17 - GN Letter re Final List of Issues for NBRLUP Amend #3.pdf
81. 2017-11-17 - GoC Letter re Final List of Issues & Hearing Agenda for NBRLUP Amend #3 ATTACHMENT 1.pdf
82. 2017-11-17 - GoC Letter re Final List of Issues & Hearing Agenda for NBRLUP Amend #3 ATTACHMENT 2.pdf

83. 2017-11-17 - GoC Letter re Final List of Issues & Hearing Agenda for NBRLUP Amend #3 Cover Letter.PDF
84. 2017-11-17 - Pond Inlet, Mary River Phase 2 Review Committee Request to Participate in Public Hearing.pdf
85. 2017-11-17 - Pond Inlet, Mary River Phase 2 Review Committee Submission re NBRLUP Amendment #3.pdf
86. 2017-11-17 - QIA Draft Proposed Amendment to NBRLUP - FINAL (Schedule B) INUK.pdf
87. 2017-11-17 - QIA Submission re NBRLUP Amendment #3.pdf
88. 2017-11-17 - QIA Submissions Final (Schedule A) INUK.pdf
89. 2017-11-17-08MN053-Baffinland Ltr to NIRB Re NBRLUP Amendment-IMTE.pdf
90. 2017-11-17-08MN053-INAC Ltr to NIRB Re NBRLUP Amendment-Attachment 1-IMTE.pdf
91. 2017-11-17-08MN053-INAC Ltr to NIRB Re NBRLUP Amendment-IMTE.pdf
92. 2017-11-17-08MN053-QIA Ltr NIRB RE NBRLUP Amendment-IMTE.pdf
93. 2017-11-17-08MN053-QIA Ltr NPC RE NBRLUP Amendment-IMTE.pdf
94. 2017-11-17-08MN053-WWF Ltr NPC RE NBRLUP Amendment-IMTE.pdf
95. 2017-11-17-08MN053-WWF Ltr to NIRB Re NBRLUP Amendment-IMTE.pdf
96. 2017-11-23 - Municipality of Pond Inlet Motion Paper re NBRLUP Amendment 3.pdf
97. 2017-11-27 - NPC Letter to BIMC re forthcoming modifications.pdf
98. 2017-11-27 BIMC Presentation NBRLUP Amendment Public Hearing (Eng-Inuktitut).pdf
99. 2017-11-29 BIMC Memo_Caribou_Rail_Commitments.pdf
100. 2017-11-29 BIMC Response to NPC Letter re forthcoming modifications.pdf
101. 2017-11-30 - Pond Inlet, Mary River Phase II Committee Letter re Public Hearing.pdf
102. 2017-11-30-08MN053-NIRB Ltr to NPC Re NIRB Summary of Information Received-OEDE.pdf
103. 2017-12-01 - Resolute HTO & Hall Beach HTO Letters of Support to Mittimatalik HTO re NBRLUP Amendment 3.pdf
104. 2017-12-01 BIMC Map - North Baffin Caribou Ecology and Harvesting Information(1Sept2016).pdf
105. 2017-12-05 NPC Notice re Dates for Final Submissions.pdf
106. 2017-12-08 - D.Qanatsiaq Letter of Support re NBRLUP Amendment 3.pdf
107. 2017-12-08 - Savik Enterprises Ltd. Letter of Suppoer re NBRLUP Amendment 3.pdf
108. 2017-12-10 - L.Paneak Letter of Support re NBRLUP Amendment 3.pdf
109. 2017-12-11 - BIMC Response re Public Hearing Question on Railway Section Height.pdf
110. 2017-12-11 - G.Iqalukjuak BCLO Clyde River Letter of Support re NBRLUP Amendment 3.pdf
111. 2017-12-11 - I.Satuqsi Letter of Support re NBRLUP Amendment 3.pdf
112. 2017-12-11 - I.Tigullaraq Letter of Support re NBRLUP Amendment 3.pdf
113. 2017-12-11 - Municipality of Igloolik Letter of Support re NBRLUP Amendment 3.pdf
114. 2017-12-11 - NWT&NU Chamber of Mines, Letter of Support re NBRLUP Amendment 3.pdf
115. 2017-12-12 - GN Final Comments re NBRLUP Amendment 3.pdf
116. 2017-12-12 - QIA Supplementary Submission re NBRLUP Amendment 3.pdf
117. 2017-12-12 - Qikiqtani Industry Ltd. Comments re NBRLUP Amendment 3.pdf
118. 2017-12-12 - R.Toookome, Letter of Support re NBRLUP Amendment 3.pdf
119. 2017-12-19 BIMC Final Response to Hearing & Post Hearing comments re NBRLUP Amendment 3.pdf
120. 2017-12-19 BIMC Letter to QIA and GN - Distribution of benefits from the Mary River Mine- ENG.pdf

SCHEDULE “B”: RECOMMENDED AMENDMENT

Amendment Number 3 to the North Baffin Regional Land Use Plan

The Undersigned, are pleased to approve, on behalf of the Designated Inuit Organization, the Government of Canada and the Government of Nunavut, Amendment Number 3 to the North Baffin Regional Land Use Plan which is effective as of _____

Aluki Kotierk, President,
Nunavut Tunngavik Inc.
P.O. Box 638 Iqaluit, NU X0A 0H0

The Honourable Carolyn Bennett,
Minister of Crown-Indigenous Relations and Northern Affairs, Canada
Crown-Indigenous Relations and Northern Affairs
Executive Offices
10 Wellington Street
Gatineau, Quebec K1A 0H4

The Honourable Elisapee Sheutiapik
Minister of Environment
Department of Environment, Government of Nunavut
1104A Inuksugait Plaza,
PO Box 1000, Station 1500
Iqaluit, Nunavut X0A 0H0

Part 1 - Background

1.1 Introduction

Part 1 is provided for background and information purposes only and does not form part of the Amendment.

1.2 Purpose

The purpose of this Amendment is to add new permitted uses and clarify the permitted uses of a transportation corridor in the North Baffin Regional Land Use Plan (NBRLUP). The amended transportation corridor includes changes and upgrades to the Milne Inlet Tote Road as described in Article 21 and Schedule 21-2 of the Nunavut Agreement (NA) and is further described herein.

1.3 Location

The lands generally located North of Mary River, North Baffin Island, 1000km North of Iqaluit, and described as the line commencing at the Mary River Mine Site, approximately 71.3N-79.22W, and running generally North for approximately 100km to the Milne Port at approximately 71.53N-80.54W and then running generally North through Milne Inlet and then East through Eclipse Sound to Baffin Bay for approximately 270km and as generally illustrated in Schedule “A” of the Amendment.

1.4 Basis

The NBRLUP provides the NPC the option to recommend an amendment to the NBRLUP to include a new transportation corridor where the NPC has determined that a corridor:

- minimises negative impacts on community lifestyles;
- improves access to other resources having high potential for development, while still maintaining the shortest practicable distance between the primary resource areas and the trans-shipment location;
- has been designed in accordance with existing and prospective land use capability including topography, soil, permafrost and wildlife;
- has been designed in accordance with the availability of granular supplies;

- does not negatively impact community business, residential and projected expansion areas;
- does not negatively impact important fish and wildlife harvesting areas;
- does not impact key habitat for fish and wildlife species, especially areas used by endangered species; and
- does not impact high scenic, historic, cultural and archeological value.

The NPC determined that the addition of a railway to the existing transportation corridor as described requires an amendment and that this amendment application satisfies the above provisions in respect of the existing road, proposed railway and open-water marine shipping.

Whereas the NPC has conducted public reviews of the proposed transportation corridor for the Mary River Iron Ore Project, generally described as the Milne Inlet Tote Road and a proposed railway from the Mary River Mine Site to Milne Port and an open-water marine shipping route from Milne Port through Eclipse Sound to Baffin Bay, and as further described in BIMC's "Summary of Information Provided to the NPC in accordance with Appendices J and K of the NBRLUP November 8, 2013" and BIMC's "Proposal for Amendment to the NBRLUP in relation to the Mary River Phase 2 Expansion Project (NPC File # 148420)", as revised on October 24, 2017 in accordance with section 3.5.12 of the NBRLUP:

- Pursuant to section 3.5.12 of the NBRLUP the NPC considers it appropriate to amend the NBRLUP to reflect a new railway being added to the terrestrial transportation corridor. By amending the NBRLUP to identify the transportation corridor, environmental and social disturbances will be confined to a specific and defined area, limiting, as far as possible, the geographic area involved in disturbances; and
- By amending the NBRLUP to identify the transportation corridor, clarity, certainty and direction will be provided for other possible communication and transportation initiatives and or/systems in the Region.

1.5 Mine Inlet Tote Road and Public Access Easement

Nothing in this Amendment will prevent or prohibit the public right of access, as described in Schedule 21-2 of the NA, on the Inuit Owned Lands described in that Schedule.

Part 2 – The Amendment

Amendment No. 3 Mary River Transportation Corridor

2.1 Introduction

The following text and the attached schedule designated as Schedule “A” constitute Amendment No. 3 to the North Baffin Regional Land Use Plan (NBRLUP).

2.2 Details of the Amendment

The North Baffin Regional Land Use Plan is amended as follows;

- 2.2.1 Appendix “P” is added after Appendix “O” in the NBRLUP and replaces Appendix “Q” which is deleted from the NBRLUP.

Appendix “P”

The lands generally located North of Mary River, North Baffin Island, 1000km North of Iqaluit, and described as the line commencing at the Mary River Mine Site, approximately 71.3N-79.22W, and running generally North for approximately 100km to the Milne Port at approximately 71.53N-80.54W and then running generally North through Milne Inlet and then East through Eclipse Sound to Baffin Bay for approximately 270km and as generally illustrated in Schedule “A” of the Amendment may be developed for the purpose of a transportation corridor in accordance with the following provisions

- The transportation corridor, for the purposes of this Amendment, contains two components, one terrestrial and the other marine, which together constitute the Mary River Transportation Corridor, as illustrated in Schedule A to this Amendment, and may also include any infrastructure, support facilities, and any other related systems associated with the safe operation of the transportation corridor.

- The terrestrial component, encompassing the Milne Inlet Tote Road, railway and Milne Port, is limited in width at all points to not greater than 10 km, and is composed wholly of:
 - railways, including rail embankments, railway ties and rails, bridges, culverts, tunnels, railway crossings, signals, telecommunication facilities, piers, piles, yards, terminals and service, fuel storage and storage facilities associated with the railways;
 - roads (seasonal or permanent) as well as any infrastructure and support facilities, including camps, quarries, terminals, loading and unloading facilities, fuel storage and any other related systems associated with railways and roads; and
 - seasonal airstrips/icestrips.
- The marine component, encompassing the marine shipping route from the Milne Port North through Milne Inlet and then East through Eclipse Sound to Baffin Bay to the eastern extent of the land-fast ice zone consists of a marine travel route used by ship traffic to navigate and may also include marine infrastructure, including aids to navigation, fixed docks, floating docks, piers, ports, loading and unloading facilities, storage facilities, refueling facilities and any other facilities or infrastructure which is required for operating the port or for ensuring the safe passage of vessels. For greater certainty, the marine component of the Mary River Transportation Corridor does not include winter shipping through ice.
- The Mary River Transportation Corridor, for the purposes of the NBRLUP, may be used by any person for the purpose of transportation by road, rail, and open water shipping and navigation, including for the purpose of servicing the operation of the Mary River Mine Site and transporting iron ore from the Mary River Mine Site subject to the terms of this Amendment and the NBRLUP. Any industrial activity within the corridor shall be in accordance with the terms and conditions of any project certificates, permits, licences, or authorizations. Any incidental activities or regular maintenance associated with the upkeep or continued operation of the Mary River Transportation Corridor to ensure the safe operation of transportation-related infrastructure and activities will not require further review or amendment so long as otherwise not contrary to the terms of this Amendment and the NBRLUP.
- All projects within the Mary River Transportation Corridor must conform to all applicable provisions of the NBRLUP.

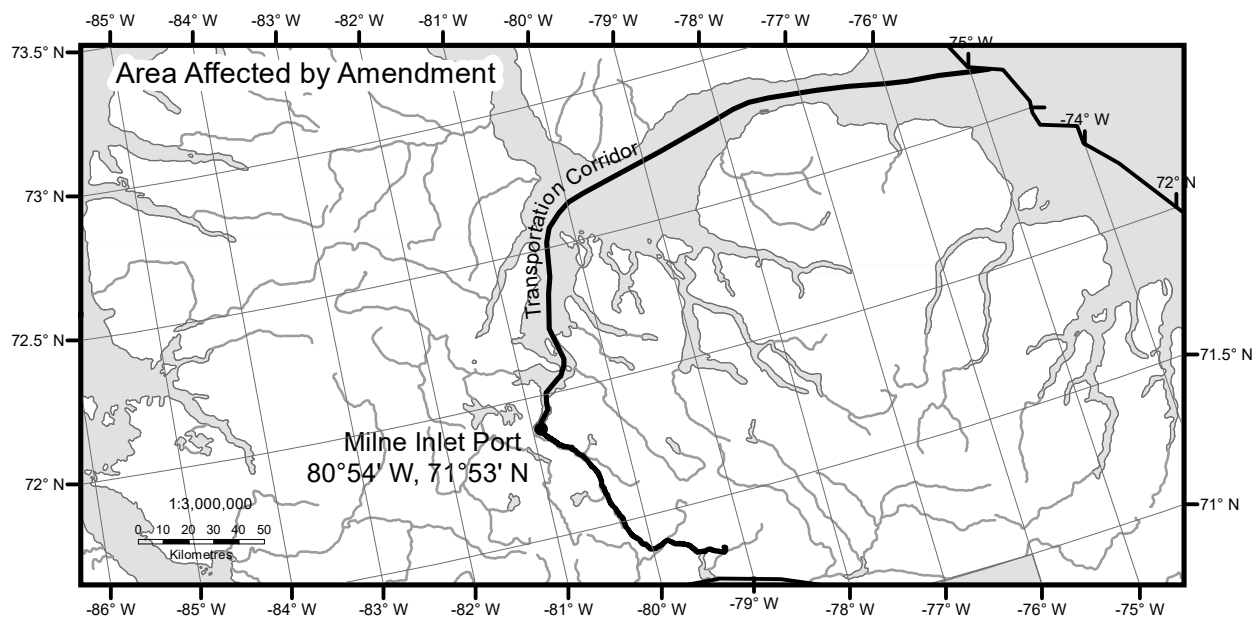
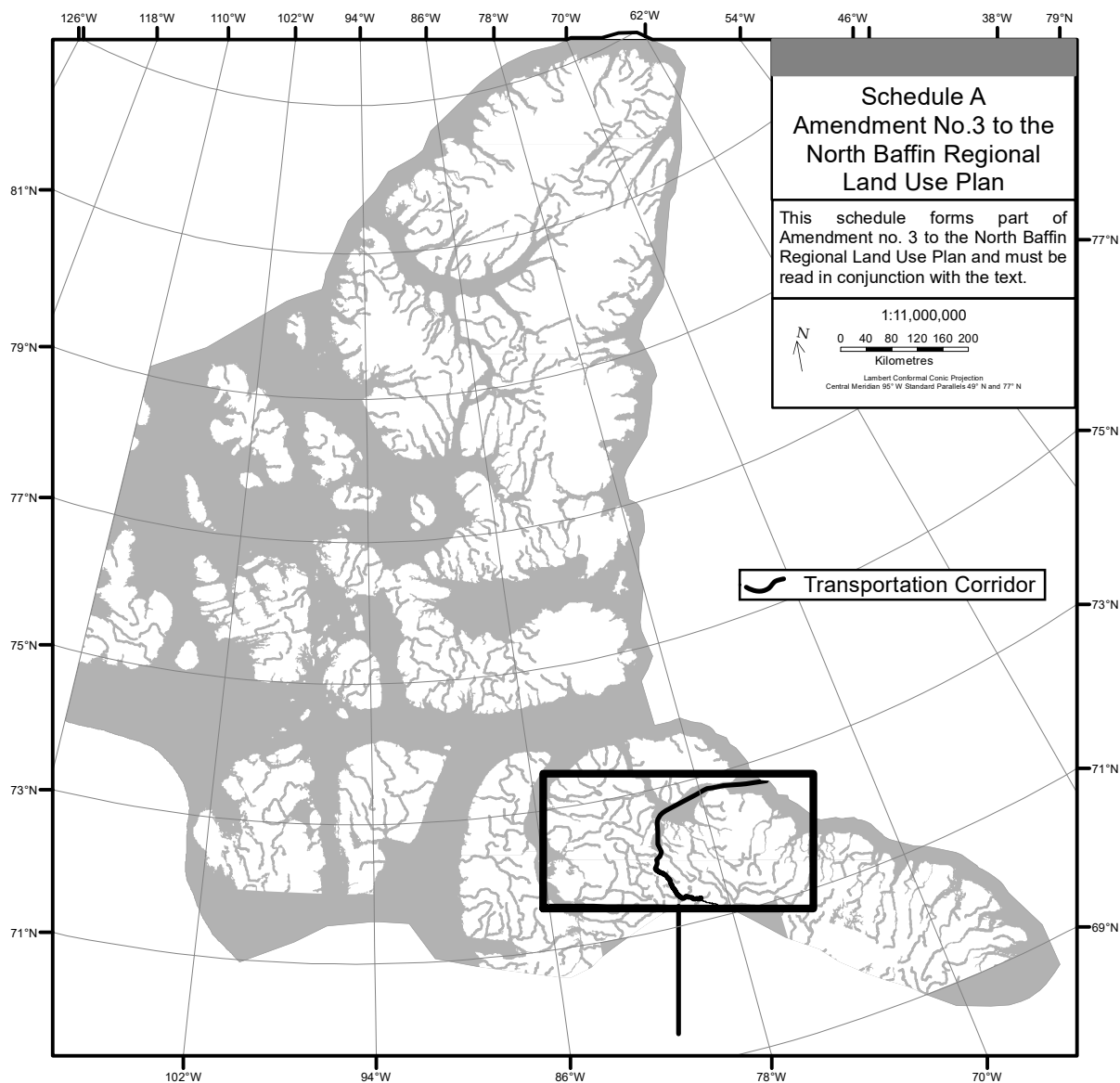
- Nothing in this Amendment will prevent or prohibit the public right of access for the purpose of transportation, as described in Schedule 21-2 of the Nunavut Agreement (NA), on the Inuit Owned Lands described in that Schedule.
- Nothing in this Amendment will prevent or prohibit the use of the lands as described in this Amendment and as shown on Schedule “A” for the purpose of wildlife harvesting and/or traditional activities carried out by residents of the Region.
- Traditional activities may include hunting, fishing, camping and any other activity considered by residents to be important in maintaining a traditional lifestyle.
- Nothing in the NBRLUP will prevent or prohibit navigation in the marine environment in accordance with existing international law and conventions, federal laws and regulations applicable to shipping and navigation, and the NA.
- Except as expressly stated in this Amendment no new prohibitions are contained or proposed in this Amendment.

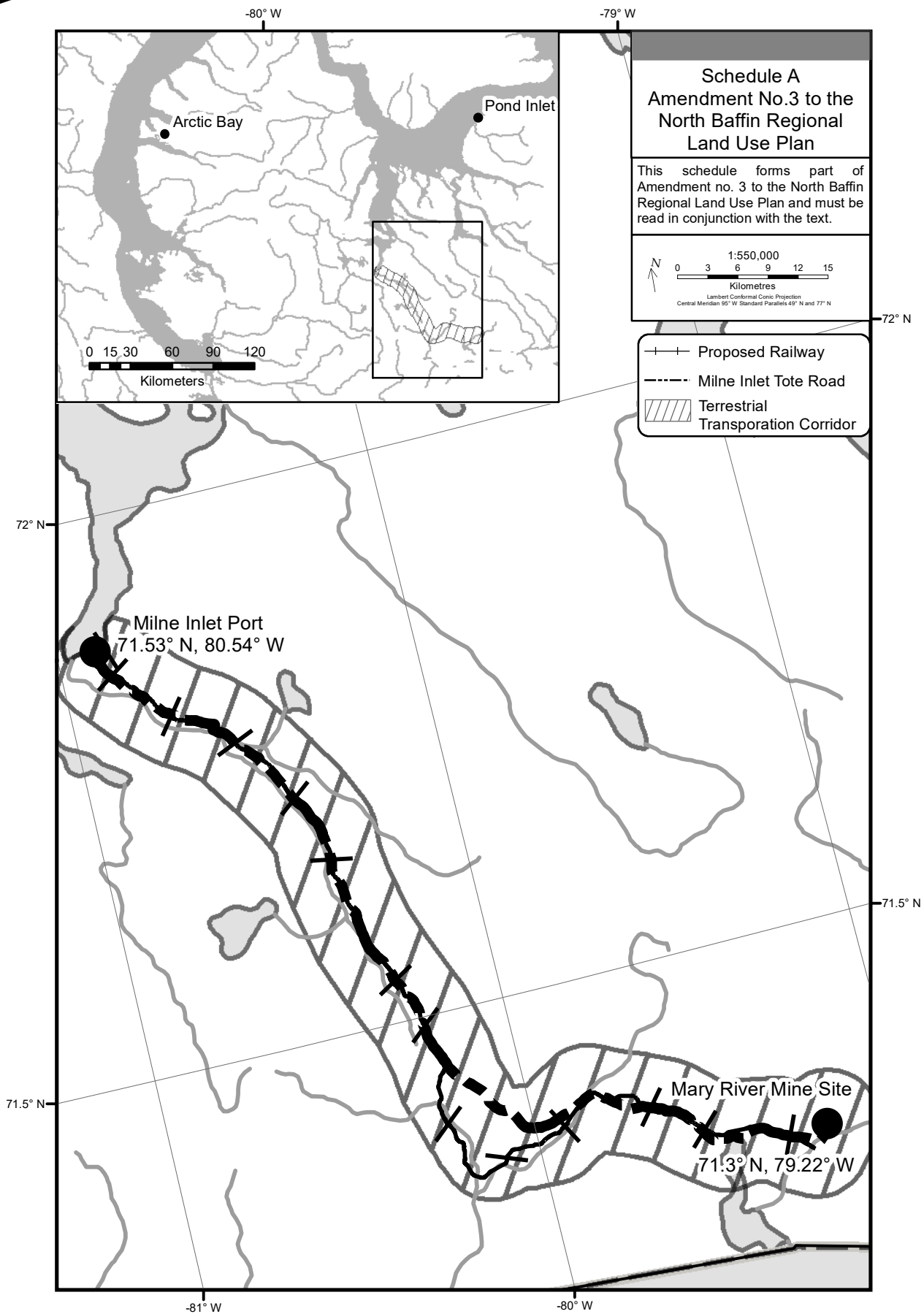
2.3 Implementation and Interpretation

For the purposes of road, rail, and open water transportation projects proposed within the Mary River Transportation Corridor, sections 3.5.11 and 3.5.12 of the North Baffin Regional Land Use Plan are considered satisfied, and no further applications to amend the plan for development of a corridor are required for those modes of transportation. The implementation of this Amendment shall be consistent and in accordance with the Nunavut Agreement the *Nunavut Planning and Project Assessment Act* (Canada) and NBRLUP.

The location of the Mary River Transportation Corridor as shown in the appended map is approximate. Minor adjustments shall not require a further amendment to the NBRLUP.

The interpretation and implementation of this Amendment shall be consistent with the paramount importance of safety of vessel, crew and the environment in accordance with existing international law and conventions, federal laws and regulations applicable to shipping and navigation.





SCHEDULE “C”: SUMMARY OF RECOMMENDATIONS

Numbers (¶) refer to the paragraphs in the report of the public review.

As asked by NIRB November 30, 2017:

¶154 – The Commission recommends NIRB review the proposed railway to apply mitigation measures to minimize impacts of dust and the proposed railway on hunters’ access to and across the tote road and on caribou, and that any impacts be considered cumulatively with the impacts of Baffinland’s currently approved use of the road.

¶156 – The Commission recommends the NIRB ensure effective CPMs are in place and fully implemented in respect of any and all projects within the corridor, and to ensure the least possible impact on travel by hunters, including by skidoo and dog sled.

Under the NBRLUP, s. 3.4.5:

¶155 – The Commission, Nunavut Wildlife Management Board, NIRB, GoC (INAC), QIA Inuit land managers, and the GN Department of Sustainable Development work together to monitor CPM effectiveness and compliance and determine if special protected areas for caribou are needed in the NBRLUP while the DNLUP is being developed.

For the purpose of revising the proposed amendment, the Commission recommends:

¶167 – Additional public reviews to add other initiatives not yet reviewed in the public with active and informed participation of Inuit and other residents affected by the NBRLUP.

¶183 – Revisions to Appendix Q to add new permitted uses – a railway – and clarify what other uses of the corridor are not permitted, and to remove references to project-related documents.

¶184 – Updating the title of the corridor to “Mary River Transportation Corridor”, the amendment number, and the location in the NBRLUP to read Appendix “P”, and for clarity removing the existing Appendix Q from the NBRLUP.

¶184 – Using the GoC’s general wording to describe railways and roads, and allowing seasonal airstrips/icestrips.

¶184 – The corridor expressly be used for road, rail, and open water shipping and navigation, but say it does not include other uses like pipelines and winter sealifts.

¶185 – Removing repeated text in section 2.2.1 of Appendix “Q”: “and generally described as the lands located North of Mary River, North Baffin Island, 1000km North of Iqaluit,” and corrected a typo in the coordinates for Milne Port.

¶185 – The amendment say the terrestrial corridor is “composed wholly of” the road, rail, and seasonal airstrips/icestrips to clarify additional transportation and/or communications corridor initiatives have not been approved as permitted uses within the corridor.

¶186 – The revised amendment say the marine component “does not include winter shipping through ice” so proponents can still propose winter shipping through ice to be assessed against the NBRLUP’s conformity requirements consistent with the Commission’s Negative Determination and without adding a new prohibition.

¶187 – The corridor be limited to not greater than 10 km in width at all points in order to accommodate both road and rail including where the rail diverges from the road.

¶188 – The amendment clarify projects in the corridor must still conform to all applicable provisions of the NBRLUP – including any prohibitions on development activities within calving areas and in water crossings – so land values and concerns identified in Areas of Importance in Appendix G, and access to those areas must be conserved, and the Code of Good Conduct in Appendix H of the NBRLUP are read together with section 3.3.1 requiring “land users to time their operations to avoid harm to wildlife and wildlife habitat and damage to community travel routes.”

¶189 – Sections 3.5.11 and 3.5.12 of the NBRLUP are satisfied for the purpose of road, rail, and open water transportation projects so no new applications to amend the NBRLUP for those modes of transportation are needed.

¶191 – The Commission recommends the revised amendment attached as Schedule “B” to this report be accepted in whole.