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Minista Avatilitjutiut
Minister of Environment
Ministre de l'Environnement

April 28, 2014

Mr. Percy Kabloona, A/Chair
Nunavut Planning Commission
PO Box 2101
Cambridge Bay, NU X0B 0C0

Dear Mr. Kabloona;

On behalf of the Government of Nunavut I am pleased to accept the proposed Amendment No. 2 (Milne Inlet Tote Road and Marine Transportation Corridor) to the North Baffin Regional Land Use Plan. The Government of Nunavut welcomed the opportunity to provide comment on a draft of this amendment, and I am satisfied with the final version that has been recommended for approval. I include a copy of the signed approval page, which will come into effect now that it has been signed by both myself and the federal Minister of Aboriginal Affairs and Northern Development Canada.

I am, however, unable to accept Amendment No. 1 (Mary River Mine Site Transportation Corridor). As per section 11.5.6(b) of the Nunavut Land Claims Agreement, I am referring it back to the NPC for reconsideration. The key reason for rejection of Amendment No. 1 is the restriction of the transportation corridor to a single user. This is contrary to both the key principles found in the North Baffin Regional Land Use Plan and general planning principles. I suggest you consider using similar wording to that found in Amendment No. 2.

While this is the most significant concern with Amendment, there are other issues in the text that could potentially lead to difficulties in interpretation. Department of Environment staff will provide your staff with detailed recommendations on proposed revisions to Amendment No. 1 to the NBRLUP, and I hope to see that input incorporated into a revised amendment.

I would like to thank the Commission for its work to date. Should you have any outstanding concerns with my decisions on these amendments to the North Baffin Regional Land Use Plan, please don't hesitate to contact me.

Sincerely,

Hon. Johnny Mike
Minister

Additional Details Supporting the Decision on the 1st Amendment to the North Baffin Regional Land Use Plan

The key reasons for rejection of the 1st amendment are described here:

Amendment section 2.2.1

The description of the location and the phrase, referring to ‘Schedule A’, as “more specifically described” is imprecise, and the map provides little or indiscernible detail for the proponent, decision-makers and stakeholders. “More specifically described” can be restated as “generally illustrated.” Improving the map detail in ‘Schedule A’ is recommended. A composite of the railway technical drawings offers a starting point.

The first provision listed in 2.2.1 describes the transportation corridor, but does not need to include all possible infrastructure as a list. As stated in the preamble, a purpose of a new transportation corridor is that it:

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...”

We interpret this statement to imply use by other land users, not just Baffinland Iron Mines Corporation (BIMC). The purpose of the amendment is permissive, and should not further restrict activities in the transportation corridor. That being the case, the wording that states “*the transportation corridor described in this amendment may be used to service the Mary River Project only*” should be removed.

A detailed list in this section may imply that infrastructure built by another proponent seeking or granted a project certificate or permit, which is not listed in the Amendment, would not be allowed to go forward or would require a plan amendment. The listed infrastructure and the 4 bullets are not necessary, as mentioned above, and should also be removed.

The passage from the 2nd amendment which defines “transportation corridor” for the purposes of the NBRLUP, should be included for consistency between the two amendments as they both relate to the addition of transportation corridors. Proposed wording appears as follows:

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, 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.

Other

Other proposed revisions to the NPC's amendment recommendation include wording concerning activities and land access which are allowed to occur, as long as those activities or access "do not contribute to a safety hazard or otherwise disrupt the safe operation of the railway and associated facilities."

We feel it is sufficient to provide that routing adjustments will not require further amendment without citing specific reasons or justification for those adjustments. The statement "*The routing adjustments referred to above must not take the infrastructure, contemplated by this amendment, outside the transportation corridor*" should be revised by sufficiently identifying the width of the corridor in an easily understandable unit of measurement or developing a map in which the transportation corridor outline is easily discernible.

The reasons cited above reflect the need for a transportation corridor to accommodate multiple users, as is the intent of such a corridor, and to remove wording which may prove to be restrictive to future development. These reasons also emphasize the need for safety considerations within a zone designated for transportation as well as improved overall clarity for land users, stakeholders and regulatory agencies.

Schedule of Amendments to the Nunavut Impact Review Board's Mary River Project Certificate [005]

| AMENDMENT NUMBER | DATE OF AMENDMENT | TYPE OF AMENDMENT |
|------------------|-------------------|---|
| 01 | May 28, 2014 | Amendment of Project Certificate to reflect modifications to the Project associated with the Early Revenue Phase Proposal |
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1.0 BACKGROUND

Whereas:

A. Pursuant to the *Nunavut Land Claims Agreement (NLCA)*, the Nunavut Impact Review Board (Board or NIRB) has completed a review of the potential ecosystemic and socio-economic effects of the Mary River Project Proposal, NIRB No. 08MN053 (Mary River Project or Project);

B. Following the issuance of the Project Certificate, Baffinland applied to the NIRB to conduct further assessment and reconsideration of the terms and conditions in the Project Certificate to reflect additional activities to be carried out under the Early Revenue Phase Proposal and the Board determined that it was appropriate to assess the potential ecosystemic and socio-economic effects of the Early Revenue Phase Proposal and reconsider whether, under Section 12.8.2 of Article 12 of the NLCA, modifications to the terms and conditions of the original Project Certificate were necessary to reflect the projected effects of the Early Revenue Phase Proposal;

C. The Board has considered the list of commitments made by Baffinland Iron Mines Corporation (Baffinland or the Proponent) throughout the NIRB's review and during the NIRB Final Hearing for the Project and the Board has every expectation that the Proponent will fulfill the commitments made during the Final Hearing, the 12.8.2 Public Hearing associated with the Early Revenue Phase Proposal, within its Final Environmental Impact Statement (FEIS), FEIS Addendum, and as contained within supporting documentation submitted during the review of the Project and assessment of effects and reconsideration associated with the Early Revenue Phase Proposal, not just the commitments that are expressly included as terms and conditions in this Project Certificate;

D. The Board has determined, pursuant to Sections 12.5.5 and 12.8.2 of Article 12 of the NLCA, that, taking into account the implementation of the measures necessary to prevent or mitigate the potential adverse environmental and socio-economic effects associated with the Project and set out as terms and conditions in this Project Certificate (as amended), the Mary River Project and Early Revenue Phase Proposal are not likely to cause significant adverse ecosystemic and socio-economic effects;

E. The Board has found, pursuant to Sections 12.5.5 and 12.8.2 of Article 12 of the NLCA and taking into account all matters relevant to its mandate including Section 12.2.5, that the Mary River Project and Early Revenue Phase Proposal will enhance and protect the existing and future well being of the residents and communities of the Nunavut Settlement Area;

F. The Minister of Aboriginal Affairs and Northern Development Canada has accepted the NIRB Final Hearing Report for the Mary River Project (September 2012), the NIRB Public Hearing Report for the Early Revenue Phase Proposal (April 2014) and the recommended terms and conditions contained in those Reports that are now included in the Project Certificate (as amended), subject to the Minister's direction to modify specific recommended terms and conditions as set out in the Minister's April 28, 2014 correspondence; and

G. Recognizing the importance of co-ordination, integration and avoiding duplication with other monitoring requirements in permits, licences and other authorizations, the project-specific monitoring program, provided as Appendix A to this Project Certificate (as amended), will be issued in final form after key regulatory authorizations, including land use permits, water licences and mineral leases, are issued for both the Mary River Project and the Early Revenue Phase Proposal activities.

Now therefore, the Nunavut Impact Review Board pursuant to Sections 12.5.12 and 12.8.3 of Article 12 of the Nunavut Land Claims Agreement, issues this amended Project Certificate for the Mary River Project, including the Early Revenue Phase Proposal, to Baffinland Iron Mines Corporation, subject to the terms and conditions contained herein.

2.0 PROJECT DESCRIPTION

The Mary River Project (the Project) as originally proposed consisted of mining iron ore from the reserve at Deposit No. 1 at a nominal production rate of 18 Million tons per year (Mt/a). The Project includes the extended exploration, construction, operation, closure, and reclamation of an open-pit mine and associated infrastructure for extraction, transportation and shipment of iron ore. There are 3 main project locations – the mine site, Milne Port north of the mine site, and Steensby Port south of the mine site. Milne Port is connected to the mine site by the Milne Inlet Tote road, approximately 100 kilometers (km) in length.

The Mary River Early Revenue Phase (ERP) Proposal is an amendment to the Mary River Project, that involves the extraction of up to an additional 4.2 million tonnes per year (Mt/a) of iron ore from the Mary River mine site, which will be transported by truck along the Milne Inlet Tote Road and shipped from Milne Port to European markets during the open water season. The ERP is in addition to the Mary River Project as originally proposed and outlined above.

The ERP construction phase is expected to last two years, with ERP operations to continue for the duration of the mine life (i.e., 21 years), running in conjunction with the Mary River Project as originally proposed.

The Mary River Project as originally proposed included construction of a railway approximately 150 kilometers (km) in length to connect the Mine Site to Steensby Port.¹ For the construction period, supplies and equipment required for construction at the Mine Site and the northern portion of the Railway would be received through Milne Port. Likewise, construction equipment and supplies for Steensby Port and the southern portion of the Railway would be received at Steensby Port.

It was expected that Steensby Port facilities and the railway would take up to four years to construct. During construction, supplies would be brought to both Milne Port and Steensby Port during the open water season. Once the railway is operational, 18 Mt/a of iron ore will be transported by Railway and shipped from Steensby Port. Shipping of iron ore will occur year round and will require vessels with icebreaking capabilities. When Steensby Port is operational, Milne Port will only be used occasionally for the delivery of oversized equipment for the Mine Site. The main destination for the iron ore is European steel makers.²

¹ The proposed alignment of the Railway was provided as an exhibit at the Final Hearing; see NIRB Final Hearing File No.: 08MN053, Exhibit #3, Cover Letter and Map book From Baffinland to the Nunavut Planning Commission With Respect to the Mary River Railway Corridor On Inuit Lands, Baffinland Iron Mines Corporation, filed by Baffinland on July 16, 2012.

² For a more detailed description of the Project, see the Project Description as provided in the Final Environmental Impact Statement filed by Baffinland Iron Mines Corporation, NIRB File No.: 08MN053, February 14, 2012.

The ERP Proposal involves, in addition to the extraction of up to an additional 4.2 million tonnes (Mt) per year of iron ore from the Mary River mine site and transportation of this ore via the Milne Inlet Tote Road to Milne Port noted above, the development of additional infrastructure at Milne Port. The additional infrastructure will include the construction of a fixed ore dock, 4.2 Mt ore stockpile and reclaim area, 3500 tonnes per hour ship loaders, camp expansion to accommodate 60 workers and the extension and relocation of the airstrip to the west of the proposed ore stockpile. The shipment of ore from Milne Port to markets in Europe will be undertaken during the open water season only using contract vessels of approximately 50,000 deadweight tonnage (DWT) to 110,000 DWT.

3.0 IMPLEMENTATION

This Project Certificate is implemented by authorizing agencies in accordance with the reviewability section of the NLCA (Section 12.9.7):

“A licence, permit, certificate or other governmental approval which implements or incorporates any term or condition of a NIRB project certificate may not be called into question in a court of law on the grounds that the issuing agency thereby fettered its discretion or otherwise acted without jurisdiction, when implementing any term or condition of a NIRB project certificate.”

If the Qikiqtani Inuit Association or other Designated Inuit Organization, or person or body that would normally have standing has concerns that any term or condition is not being implemented, these parties may seek a determination before the appropriate court regarding whether or not the terms and conditions in the project certificate have been implemented.³

3.1 Overview of NIRB Monitoring Program

As set out in Sections 12.7.1 and 12.7.2 of Article 12 of the NLCA the NIRB has the jurisdiction to establish a project-specific monitoring program to: measure the ecosystemic and socioeconomic effects of a project; assess whether the project is in compliance with the prescribed project terms and conditions; share information with regulatory agencies to support the enforcement of land, water or resource use approvals and agreements; and to assess the accuracy of predictions contained in the environmental impact statements. Given the Board’s application of the precautionary approach to several aspects of the assessments for the Mary River Project and the Early Revenue Project Proposal, in the Board’s view project-specific monitoring will play a crucial role in addressing the uncertainty regarding project effects and enabling all parties to adapt mitigation measures on an ongoing basis to ensure the Project’s negative effects are prevented or limited to the extent possible.

The role of the Board with respect to the establishment of monitoring programs is to focus the terms and conditions in relation to the Project. With respect to existing or future general regional and territorial monitoring programs that may include some of the same monitoring parameters/indicators as the project-specific monitoring program, the NLCA also directs the NIRB to avoid duplication but facilitate co-ordination and integration between the project-specific monitoring programs required by

³ See Section 12.10.5 of the NLCA

the NIRB and more general programs and initiatives such as the Nunavut General Monitoring Plan.⁴ Where the requirements of regional or territorial programs are more extensive or substantively different than those established through the Project Certificate (as amended), at all times the Proponent must ensure compliance with the Project Certificate terms and conditions (and any subsequent amendments) .

In order to co-ordinate, integrate and avoid duplication with other monitoring programs, but also to ensure that the NIRB's project-specific monitoring program yields the information required to measure effects and adequately assess compliance with terms, conditions, regulatory instruments and agreements, the NIRB's monitoring program will continue to be developed through consultation with responsible authorities, the resource and land owners and the proponent as the remaining regulatory instruments for the Project are developed. Following the issuance of this Project Certificate (as amended) by the NIRB, the framework for a project-specific monitoring program will be developed and will be provided in draft form as Appendix A to the Project Certificate. As noted in the Preamble, this framework cannot be issued in final form until key regulatory authorizations, including land use permits, water licences, mineral leases, etc. are issued so that the monitoring program supplements and supports but does not duplicate the monitoring requirements in regulatory and land use instruments⁵. Prior to finalization, the Proponent will be required to comply with all aspects of the draft framework as directed by the NIRB.

3.2 General Principles of Interpretation Applicable to Terms and Conditions:

In order to view the project-specific terms and conditions set out within this Project Certificate in the appropriate context, the following general principles of interpretation apply to the Project Certificate in its entirety, with all terms and conditions being interpreted in accordance with:

- a. The NIRB's Final Hearing Report (namely NIRB File No.: 08MN053, Final Hearing Report for the Mary River Project Proposal, September 14, 2012 available from the NIRB's registry);
- b. The NIRB's Public Hearing Report (namely NIRB File No.: 08MN053, Public Hearing Report for the Mary River Project: Early Revenue Phase Proposal, March 17, 2014) and the variances to the amended terms and conditions recommended in the Public Hearing Report as set out in the April 28, 2014 letter from the Minister of Aboriginal Affairs and Northern Development (both available from the NIRB's registry);
- c. The rights, responsibilities, authorities and jurisdiction granted under the Nunavut Land Claims Agreement (NLCA);
- d. The limits and obligations imposed under laws of general application applicable to the Proponent or any party referred to in the term and condition, as those laws may be amended over time (e.g. privacy legislation, worker's health and safety, etc.);

⁴ See the discussion in Section 5.10.3 of the report and Sections 12.7.4 and 12.7.5 of the NLCA.

⁵ As Baffinland's request for reconsideration of the Project Certificate to reflect the Early Revenue Phase Proposal was received by the Board less than a month following the issuance of the original Mary River Project Certificate, the NIRB has deferred developing the monitoring framework for the Mary River Project as originally proposed until the permits and amended licenses associated with the Early Revenue Phase Proposal activities are issued.

- e. The specific jurisdictional and policy limits applicable to authorizing agencies, Nunavut Tunngavik Incorporated, the Qikiqtani Inuit Association, or other regulatory authority with jurisdiction in respect of the Project;
- f. Where terms and conditions include specific references to items that must be taken into consideration or included in work plans, etc. these specific references are intended to establish minimum expectations but are not intended to limit the Proponent or prevent the Proponent from undertaking additional measures beyond those expressly prescribed in such terms and conditions; and
- g. As noted in the Final Hearing Report and the Public Hearing Report, for those items where a more stringent version of the precautionary principle has been applied, it is the Board's expectation that the adaptive management strategies chosen will be highly responsive to early warning signs that risks may materialize, and that rather than waiting for impacts to be noted before mitigation measures are triggered, thresholds and triggers will be set to require responses long before adverse impacts are likely.

3.3 Format of Terms and Conditions:

Wherever possible, the NIRB has used the following format for the project-specific terms and conditions set out within this Project Certificate, so as to provide clear direction on the intended application, objectives and reporting requirements:

Category: Identifies the relevant environmental component or project activity to which the term and condition applies. Wherever possible categories have been labelled so as to directly associate back to the Final Environmental Impact Statement / Addendum and Environmental Impact Statement Guidelines prepared for the Project.

Responsible Parties: Identifies the parties responsible for implementation of the term and condition. While this is generally the Proponent, at times other agencies have been implicated as appropriate.

Project Phase: Identifies the phase(s) of Project development to which the term and condition is applicable. Project phase may include any one or more of the following:

- Construction – includes site preparation and staging of materials and equipment in advance of construction
- Operations
- Temporary Closure /Care and Maintenance
- Closure and Post-Closure Monitoring – includes abandonment, decommissioning and reclamation

Objective: Provides a short description of the impact or effect being mitigated. Where relevant, expectations regarding the timing for when terms and conditions will be deemed to be satisfied (i.e. sunset clause), as well as who has discretion for determining when the term or condition is satisfied has been provided.

Term or Condition: Provides specific direction on the required action or follow up. In most instances the NIRB has endeavoured to use generalized wording to allow for maximum flexibility in achieving the stated objective, however more explicit direction has been provided where deemed necessary.

Reporting Requirements: Sets out any specific reporting parameters required to measure achievement of objectives or to demonstrate compliance, as well as the required frequency of reporting. Consideration will be given to coordination of Project Certificate reporting requirements with reporting requirements as established by other regulatory instruments associated with the Project.

It should be noted that, for some of the recommended terms and conditions, a non-binding **Commentary** section has also been added following the specific term and condition as an aid to interpretation. The Commentary section reflects clarification of the term and condition, recording the common understanding and interpretation resulting from discussions and guidance provided at the Project Certificate Workshops held in Iqaluit on December 18-19, 2012 and held by teleconference on May 21, 2014. The Commentary section is offered as a reference only and is not legally binding; in the event of a conflict between the wording in the Project Certificate and the clarification provided in the Commentary, the express wording of the Project Certificate prevails.

3.4 Flexibility

It is acknowledged that the NIRB's monitoring program will have varying requirements over the course of the Project lifecycle, and that monitoring requirements will apply from construction to eventual abandonment and reclamation. In areas where there may be a need for flexibility in relation to the terms and conditions of the Project Certificate or their application, the NIRB has endeavoured to reflect this in the associated language and/or acknowledge that objectives may be achieved through various means.

The NIRB retains the ability to give additional clarification or direction on an ongoing basis through its Monitoring Officer, with respect to compliance requirements for the Project. Upon request by the Proponent or other parties, the NIRB can provide additional clarification or direction regarding implementation of Project Certificate terms and conditions.

Where the objective of a Project Certificate term or condition can be achieved through more efficient alternate means, the Proponent is encouraged to consult with the NIRB (and other parties as required) to seek acceptance of proposed alternatives.

The NIRB has the authority to reconsider the terms and conditions of the Project Certificate to ensure that the terms and conditions are achieving their purpose. Clearly the NIRB expects the Proponent to meet its obligations under this Project Certificate (and any subsequent amendments), however, the NIRB may revisit the Project Certificate if the NIRB determines that the terms and conditions are not achieving their purpose. In the event that the monitoring program needs to be modified to better achieve its purpose, the Board, the Proponent, the Designated Inuit Organization or other interested parties may cause the Board, under Section 12.8.2 of the NLCA to revisit the monitoring program, or any other terms and conditions in the Project Certificate.

3.5 Enforcement

As noted in Section 12.10.3, where the terms and conditions of the Project Certificate are implemented or incorporated by reference into permits, certificates, licences or other governmental approvals, the enforcement of the terms and conditions included in that authorization remains with the agency responsible for the authorization (i.e. Authorizing Agency). In addition, under Part 8, Article 12 of the NLCA, if the Board determines that these terms and conditions are not achieving their purpose for any reason, including instances of significant non-compliance, the NIRB may revisit the terms and conditions contained in the Project Certificate (and any subsequent amendments).

3.6 Proponent Commitments

A listing of commitments confirmed by the parties at the Final Hearing was provided within the NIRB's Final Hearing Report for the Project as Appendix A.⁶ Although some of these commitments have provided the basis for the terms and conditions set out in the Project Certificate, others, due to various reasons, such as limits on the NIRB's jurisdiction, have not been expressly included as terms and conditions in the Project Certificate. However, as noted in the Preamble to the Certificate, even for those commitments that are not included in the Project Certificate, recognizing the importance of honouring commitments to the credibility of the Board's assessment process, it is the Board's expectation that **all parties** will make best efforts to fulfill the commitments referenced in the Final Hearing, including the listing provided as Exhibit #64⁷ and the listing in Appendix A: Table of Commitments attached to the Final Hearing Report.

To support transparency and accountability associated with the Proponent's commitments, the Board requests that the Proponent provide, in an annual report to the NIRB, a summary of the status of the Proponent's progress with respect to meeting the commitments set out in Appendix A of the Final Hearing Report.

4.0 PROJECT-SPECIFIC TERMS AND CONDITIONS

4.1 General

NIRB Monitoring Responsibilities

1. The NIRB will appoint Monitoring Officers as required to monitor the Project in accordance with the purpose of a monitoring program as set out in section 12.7.2 of the Nunavut Land Claims Agreement for the full life of the Project, including closure and restoration. Subject to direction from the NIRB, the responsibilities of the NIRB Monitoring Officers will include:

⁶ NIRB File No.: 08MN053, Final Hearing Report for the Mary River Project Proposal, September 14, 2012, Appendix A: Table of Commitments from the Final Hearing, at pp. A-1-A-20.

⁷ NIRB Final Hearing File No.: 08MN053, Exhibit 64, Baffinland Iron Mines Corporation, Commitments made in response to recommendations of the Government of Nunavut, Pond Inlet, July 28, 2012, filed by Baffinland on July 28, 2012.

- a. Providing direction to the Proponent, the Terrestrial and Marine Environment Working Groups, regulatory agencies, and the Qikiqtaaluk Socio-Economic Monitoring Committee to supply NIRB with reports and information respecting the Project's operations, impacts and the implementation of mitigative measures;
 - b. Conducting a periodic evaluation of the monitoring program for the Project;
 - c. Compiling a report on the adequacy of the monitoring program and on the ecosystemic and socio-economic impacts of the Project; and
 - d. Where appropriate, recommending to the NIRB reconsideration of Project Certificate Terms and Conditions in accordance with section 12.8.2 of the Nunavut Land Claims Agreement.
- 2. The NIRB will report annually (in English and Inuktitut) on the results of its Monitoring Program for the Project.
 - 3. The NIRB will schedule periodic updates regarding its Monitoring Program for the communities most affected by the Project.
 - 4. The NIRB Monitoring Officers will schedule periodic site inspections at the Project, coordinating with other regulatory agencies to the extent possible.

General Regulatory Requirements

- 5. The Proponent must obtain all required federal and territorial permits and other approvals, and shall comply with the requirements of such regulatory instruments.
- 6. The Proponent shall take prompt and appropriate action to remedy any occasion of non-compliance with environmental laws and regulations and/or regulatory instruments, and shall report any non-compliance as required by law immediately. A description of all instances of non-compliance and associated follow up is to be reported annually to the NIRB.
- 7. The Proponent shall meet with respective licensing authorities prior to the commencement of construction to discuss the posting of adequate performance bonding. Licensing authorities are encouraged to take every measure to require that sufficient security is posted before construction begins.

Monitoring Records

- 8. All monitoring information collected pursuant to the Project Certificate and various regulatory requirements for the Project shall contain the following information:
 - a. The name of the person(s) who performed the sampling or took the measurements including any relevant accreditations;
 - b. The date, time and place of sampling or measurement, and weather conditions;
 - c. The date of analysis;
 - d. The name of the person(s) who performed the analysis including any relevant accreditations;
 - e. A description of the analytical methods or techniques used; and
 - f. A discussion of the results of any analysis.

9. The Proponent shall make its monitoring results available, to the fullest extent possible, in English and Inuktitut.
10. The Proponent shall keep and maintain the records, including results, of all Project-related monitoring data and analysis for the life of the Project, including closure and post-closure monitoring.
11. The Proponent shall maintain the Final Environmental Impact Statement and the Environmental Effects Monitoring program developed for the Project, with predictions updated as new baseline data is collected.
12. The Proponent shall establish a Project-specific web portal or web page as a means of making all non-confidential monitoring and reporting information associated with the Project available to the general public. This does not limit what the Proponent may be required to submit to the NIRB or other regulatory authorities to meet reporting requirements.

4.2 Ecosystemic Terms and Conditions

Meteorology and Climate (including Climate Change)

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| Term and Condition No. | 1 |
| Category: | Meteorology and Climate – Climate Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To provide feedback on the impacts that climate change might be having on the port facilities. |
| Term or Condition: | The Proponent shall use GPS monitoring or a similar means of monitoring at both Steensby Port and Milne Port, with tidal gauges to monitor the relative sea levels and storm surges at these sites. |
| Reporting Requirements: | The Proponent shall summarize and supply these monitoring results to NIRB in the annual project report. |

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| Term and Condition No. | 2 |
| Category: | Meteorology and Climate – Climate Change Validation and Studies |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To provide feedback on the impacts that climate change might be having on the Project. |
| Term or Condition: | The Proponent shall provide the results of any new or revised assessments and studies done to validate and update climate change impact predictions for the Project and the effects of the Project on climate change in the Local Study Area and Regional Study Area as defined in the Proponent's Final Environmental Impact Statement. |
| Reporting Requirements: | The Proponent shall provide new or revised assessments and studies to the |

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| | NIRB, the affected communities, relevant regulatory authorities, and interested parties. |
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| Term and Condition No. | 3 |
| Category: | Meteorology and Climate – Green House Gas Emissions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To confirm that the Proponent is exploring and implementing concrete steps to reduce greenhouse gases. |
| Term or Condition: | The Proponent shall provide interested parties with evidence of continued initiatives undertaken to reduce greenhouse gas emissions. |
| Reporting Requirements: | The Proponent shall include relevant information in the Annual Report submitted to the NIRB. |

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| Term and Condition No. | 4 |
| Category: | Climate Change – Consultation on Climate |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To promote public awareness and engagement of affected groups. |
| Term or Condition: | The Proponent shall endeavour to include the participation of Inuit from affected communities and other communities in Nunavut when undertaking climate-change related studies and research. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 5 |
| Category: | Meteorology and Climate – Weather Monitoring Data |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To provide families of employees with up to date information. |
| Term or Condition: | The Proponent shall endeavour to explore and implement reasonable measures to ensure that weather-related information for the various Project sites is readily accessible to the public on a continual basis throughout the life of the Project |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 6 |
| Category: | Meteorology and Climate – Emissions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, |

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| | Closure and Post-Closure Monitoring |
| Objective: | To provide feedback on the Project's emissions. |
| Term or Condition: | The Proponent shall provide the results of any emissions calculations conducted to determine the level of sulphur dioxide (SO ₂) emissions, nitrogen oxide (NO _x) emissions and greenhouse gases generated by the Project using fuel consumption or other relevant criteria as a basis. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB |

Air Quality

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| Term and Condition No. | 7 |
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| Category: | Air Quality – Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To provide feedback on the Project's emissions. |
| Term or Condition: | The Proponent shall update its Air Quality and Noise Abatement Management Plan to provide for continuous monitoring at land-based monitoring stations designed to capture operations phase ship-generated SO ₂ and NO ₂ emissions at Steensby Port and Milne Port. Continuous monitoring is to be carried out through several shipping seasons at each port as required to determine that emissions are at acceptable levels. |
| Reporting Requirements: | The updated plan shall be provided to the NIRB for review and comment at least 60 days prior to commencement of construction activities. |

***Commentary:** It is anticipated that continuous monitoring rather than passive monitoring will be required at the land-based monitoring stations to identify if hourly exceedances occur.*

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| Term and Condition No. | 8 |
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| Category: | Air Quality – Greenhouse Gas Emissions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To provide feedback on the Project's emissions. |
| Term or Condition: | The Proponent shall demonstrate through monitoring of air quality at the mine site and at the Steensby Inlet and Milne Inlet port sites that SO ₂ and NO ₂ emissions remain within predicted levels and, where applicable, within limits established by all applicable guidelines and regulations. In cases where exceedances are manifested, the Proponent shall provide an explanation for the exceedance, a description of planned mitigation, and shall conduct additional monitoring to evaluate the effectiveness of mitigative measures. |
| Reporting Requirements: | To be included in the Proponent's annual reporting to the NIRB. |

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| Term and Condition No. | 9 |
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| Category: | Air Quality – Greenhouse Gas Emissions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To provide feedback on the Project's emissions. |
| Term or Condition: | The Proponent shall provide calculations of greenhouse gas emissions generated by activities at the Steensby Inlet and Milne Inlet port sites and other Project sources including aircraft associated with the Project. Calculations shall take into consideration, fuel consumption as measured by Baffinland's purchase and use as well as the fuel use of its contractors and sub-contractors. |
| Reporting Requirements: | To be included in the Proponent's annual reporting to the NIRB. |

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| Term and Condition No. | 10 |
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| Category: | Air Quality –Dust Management and Monitoring Plan |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to air quality from dust dispersion. |
| Term or Condition: | <p>The Proponent shall update its Dust Management and Monitoring Plan to address and/or include the following additional items:</p> <ul style="list-style-type: none"> a) Outline the specific plans for monitoring dust along the first few kilometres of the rail corridor leaving the Mary River mine site. b) Identify the specific adaptive management measures to be considered should monitoring indicate that dust deposition from trains transporting along the rail route is greater than initially predicted. c) Outline specific plans for monitoring dustfall at intervals along and in the vicinity of the Milne Inlet Tote Road to determine the amount and extent of dustfall. d) Identify the specific adaptive management measures to be considered if monitoring indicates that dust deposition from traffic on the Milne Inlet Tote Road is greater than initially predicted. |
| Reporting Requirements: | To be provided to the NIRB for review and comment at least 60 days prior to commencement of construction activities. |

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| Term and Condition No. | 11 |
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| Category: | Air Quality – Incineration Management Plan |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts to air quality from incineration activities. |
| Term or Condition: | The Proponent shall develop and implement an Incineration Management Plan that takes into consideration the recommendations provided in Environment Canada's Technical Document for Batch Waste Incineration (2010). |

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| Reporting Requirements: | Updated Incineration Management Plan to be provided to the NIRB at least 60 days prior to the commencement of construction activities. |
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| Term and Condition No. | 12 |
| Category: | Air Quality – Incineration |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To mitigate impacts to air quality from incineration activities. |
| Term or Condition: | Prior to commencing any incineration of on-site Project wastes, the Proponent shall conduct at least one stack test immediately following the commissioning of each temporary and permanent incinerator. |
| Reporting Requirements: | Stack test results to be reported to the NIRB and Environment Canada annually as required. |

Noise and Vibration

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| Term and Condition No. | 13 |
| Category: | Noise and Vibration-Use of Explosives |
| Responsible Parties: | The Proponent, Fisheries and Oceans Canada |
| Project Phase: | Construction |
| Objective: | To determine appropriate protection of fish and aquatic life in the Arctic. |
| Term or Condition: | The Proponent is encouraged to work with Fisheries and Oceans Canada at the regulatory phase and to take a precautionary approach when selecting the overpressure threshold to be applied to explosives use for the protection of fish and aquatic life. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 14 |
| Category: | Noise and Vibration- Noise and Vibration Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate noise and vibration at Project sites, especially living areas. |
| Term or Condition: | The Proponent shall conduct noise and vibration monitoring at Project accommodations sites located at the Mary River mine site, Steensby Inlet Port site, and Milne Inlet Port site. Sampling shall be undertaken during the summer and winter months during all phases of Project development. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB |

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| Term and Condition No. | 14 (a) |
| Category: | Noise and Vibration- Noise and Vibration Adaptive Management |

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| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To mitigate potential impacts of noise to marine wildlife during project construction |
| Term or Condition: | The Proponent, through coordination with the MEWG as may be appropriate, shall demonstrate appropriate adaptive management for construction activities at Milne Inlet that have the potential to disrupt marine mammal species, including pile driving and ore dock construction, are undertaken. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB |

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| Term and Condition No. | 14 (b) |
| Category: | Noise and Vibration- Noise and Vibration Adaptive Management |
| Responsible Parties: | The Proponent |
| Project Phase: | Operations |
| Objective: | To mitigate potential impacts of noise to wildlife and people during project operations |
| Term or Condition: | The Proponent, through coordination with the TEWG as may be appropriate, shall demonstrate appropriate adaptive management for project activities during operations which have the potential to produce noise and sensory disturbance to wildlife and other users of project areas. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB |

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| Term and Condition No. | 15 |
| Category: | Noise and Vibration- Noise and Vibration Monitoring |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association, local Hamlet organizations |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To enhance public safety when travelling around the Project area. |
| Term or Condition: | The Proponent shall collaborate to the extent possible with the Qikiqtani Inuit Association and local Hamlet organizations when undertaking consultation with all affected communities regarding railway, tote road and marine shipping operations. During these consultations, it is recommended that the Proponent provide information including video, audio, and photographic representation as well as any other aids (i.e. models) that may enhance the general public's understanding of railway, tote road and marine shipping operations, as well as all safety considerations for members of the public who may be travelling around the project area. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Hydrology and Hydrogeology

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| Term and Condition No. | 16 |
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| Category: | Hydrology and Hydrogeology – Water Infrastructure |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To provide assurance that the potential impacts to flow and quantity of water in the Project area are minimized. |
| Term or Condition: | The Proponent shall ensure that the water related infrastructure or facilities that are designed and constructed, including the modification of culverts, diversion of watercourses, and diversion of runoff into watercourses along the railway, access roads, port sites, the Milne Tote Road, and other areas of the Project site, are consistent with those proposed in the FEIS and FEIS Addendum in terms of type, location, and scope and that the requirements of all relevant regulatory authorities are satisfied advance of constructing those facilities. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

***Commentary:** It is understood that the term “consistent with those proposed in the FEIS” requires general consistency only in relation to the type, location and scope of this infrastructure and facilities, but does not limit the ability of the Proponent to refine and optimize the design, placement and construction as may become necessary to reflect site-specific conditions encountered during construction.*

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| Term and Condition No. | 17 |
| Category: | Hydrology and Hydrogeology – Effluent Management |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to water bodies from effluent. |
| Term or Condition: | The Proponent shall develop and implement effective measures to ensure that effluent from project-related facilities and/or activities, including sewage treatment plants, ore stockpiles, and mine pit, satisfies all discharge criteria requirement established by the relevant regulatory agencies prior to being discharged into the receiving environment. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 18 |
| Category: | Hydrology and Hydrogeology – Pit Lake Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To enhance predictions for mine site closure conditions. |
| Term or Condition: | The Proponent shall carry out continued analyses over time to confirm and update, accordingly, the approximate fill time for the mine pit lake identified in the FEIS. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 19 |
| Category: | Hydrology and Hydrogeology – Water Infrastructure Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts to natural water flow. |
| Term or Condition: | The Proponent shall ensure that it develops and implements adequate monitoring and maintenance procedures to ensure that the culverts and other conduits that may be prone to blockage do not significantly hinder or alter the natural flow of water from areas associated with the proposed mine. In addition, the Proponent shall monitor, document and report the withdrawal rates for water removed and utilized for all domestic and industrial purposes. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Groundwater/Surface Waters

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| Term and Condition No. | 20 |
| Category: | Groundwater/Surface Waters - Explosives |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure that the effects associated with the manufacturing, storage, transportation and use of explosives do not negatively impact the areas surrounding the Project. |
| Term or Condition: | The Proponent shall monitor the effects of explosives residue and related by-products from project-related blasting activities as well as develop and implement effective preventative and/or mitigation measures, including treatment, if necessary, to ensure that the effects associated with the manufacturing, storage, transportation and use of explosives do not negatively impact the Project and surrounding areas. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 21 |
| Category: | Groundwater/Surface Waters – Aquatic Effects Monitoring Plan and dustfall monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To mitigate potential impacts to surface and ground waters. |
| Term or Condition: | The Proponent shall ensure that the scope of the Aquatic Effects Monitoring Plan (AEMP) includes, at a minimum: <ul style="list-style-type: none"> a. monitoring of non-point sources of discharge, selection of appropriate reference sites, measures to ensure the collection of |

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| | <p>adequate baseline data and the mechanisms proposed to monitor and treat runoff, and sample sediments; and</p> <p>b. measures for dustfall monitoring designed as follows:</p> <ul style="list-style-type: none"> i. To establish a pre-trucking baseline and collect data during Project operation for comparison; ii. To facilitate comparison with existing guidelines and potentially with thresholds to be established using studies of Arctic char egg survival and/or other studies recommended by the Terrestrial Environment Working Group (TEWG); and, iii. To assess the seasonal deposition (rates, quantities) and chemical composition of dust entering aquatic systems along representative distance transects at right angles to the Tote Road and radiating outward from Milne Port and the Mine Site. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 22 |
| Category: | Groundwater/Surface Waters – Sediment and Erosion Management Plan |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To develop appropriate sediment and erosion controls to prevent impacts to surface waters. |
| Term or Condition: | The Proponent shall develop a detailed Sediment and Erosion Management Plan to prevent and/or mitigate sediment loading into surface water within the Project area. |
| Reporting Requirements: | Plan to be provided to the NIRB for review and comment at least 60 days prior to commencement of construction activities. |

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| Term and Condition No. | 23 |
| Category: | Groundwater/Surface Waters – Groundwater Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to groundwater quality. |
| Term or Condition: | The Proponent shall develop and implement a Groundwater Monitoring and Management Plan to monitor, prevent and/or mitigate the potential effects of the Project on groundwater within the Project area. |
| Reporting Requirements: | Plan to be provided to the NIRB for review and comment at least 60 days prior to commencement of construction activities. |

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| Term and Condition No. | 24 |
| Category: | Groundwater/Surface Waters – Effluent Management |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts to groundwater and surface waters from effluent |

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| | discharge. |
| Term or Condition: | The Proponent shall monitor as required the relevant parameters of the effluent generated from Project activities and facilities and shall carry out treatment if necessary to ensure that discharge conditions are met at all times. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Landforms, Geology and Geomorphology, Soils and Permafrost

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| Term and Condition No. | 25 |
| Category: | Landforms – Additional Geotechnical Investigations |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To mitigate impacts to sensitive landforms. |
| Term or Condition: | The Proponent shall undertake the additional geotechnical investigations to identify sensitive landforms, modify engineering design for Project infrastructure, develop and implement preventative and/or mitigation and monitoring measures to minimize the impacts of the Project's activities and infrastructure on sensitive landforms. |
| Reporting Requirements: | Plan to be provided to the NIRB for review and comment at least 60 days prior to commencement of construction activities. |

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| Term and Condition No. | 26 |
| Category: | Landforms and Soils – Erosion Management Plan |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To develop appropriate measures for preventing destabilization and erosion. |
| Term or Condition: | The Proponent shall develop and implement a comprehensive erosion management plan to prevent or minimize the effects of destabilization and erosion that may occur due to the Project's construction and operation. |
| Reporting Requirements: | Plan to be provided to the NIRB for review and comment at least 60 days prior to commencement of construction activities. |

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| Term and Condition No. | 27 |
| Category: | Landforms, Geology and Geomorphology – Natural Aesthetics |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts to natural aesthetics. |
| Term or Condition: | The Proponent shall include within its public consultation report information related to the sentiments expressed by affected communities |

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| | about the impacts that changes to the topography and landscape have had on the aesthetic value of the Project area. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 28 |
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| Category: | Landforms, Geology and Geomorphology – Permafrost |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure that permafrost integrity is maintained. |
| Term or Condition: | The Proponent shall monitor the effects of the Project on the permafrost along the railway and all other Project affected areas and must implement effective preventative measures to ensure that the integrity of the permafrost is maintained. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 29 |
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| Category: | Landforms, Geology and Geomorphology – Design Plans |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To confirm constructed components meet design as assessed. |
| Term or Condition: | The Proponent shall provide to the respective regulatory authorities, for review and acceptance, for-construction engineering design and drawings, specifications and engineering analysis to support design in advance for constructing those facilities. Once project facilities are constructed, the Proponent shall provide copies of the as-built drawings and design to the appropriate regulatory authorities. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

***Commentary:** “Acceptance” by a regulatory authority of for-construction engineering design and drawings, specifications and engineering analysis merely indicates that the authority has received the documentation but does not imply that the authority has approved the design, drawings, specifications or analysis received.*

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| Term and Condition No. | 30 |
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| Category: | Landforms, Geology and Geomorphology – Quarries |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To provide oversight on quarry design and management. |
| Term or Condition: | The Proponent shall develop site-specific quarry operation and management plans in advance of the development of any potential quarry site or borrow pit. |
| Reporting Requirements: | Plans to be provided to the NIRB for review and comment at least 30 days |

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| | prior to commencement of construction activities. |
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Vegetation

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| Term and Condition No. | 31 |
| Category: | Vegetation – Construction and Operations |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To minimize impacts to vegetation. |
| Term or Condition: | The Proponent shall ensure that Project activities are planned and conducted in such a way as to minimize the Project footprint. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 32 |
| Category: | Vegetation – Construction and Operations |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent introduction of invasive species. |
| Term or Condition: | The Proponent shall ensure that equipment and supplies brought to the Project sites are clean and free of soils that could contain plant seeds not naturally occurring in the area. Vehicle tires and treads in particular must be inspected prior to initial use in Project areas. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 33 |
| Category: | Vegetation – Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To facilitate monitoring. |
| Term or Condition: | The Proponent shall include relevant Monitoring and Management Plans within its Environmental Management System, Terrestrial Environment Management and Monitoring Plan (TEMMP). |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB . |

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| Term and Condition No. | 34 |
| Category: | Vegetation – Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To determine baseline metal levels of soils used by berry-producing plants. |

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| Term or Condition: | The Proponent shall conduct soil sampling to determine metal levels of soils in areas with berry-producing plants near any of the potential development areas, prior to commencing operations. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 35 |
| Category: | Vegetation – Monitoring |
| Responsible Parties: | The Proponent, local Hunters and Trappers Organizations |
| Project Phase: | Construction and Operations |
| Objective: | To determine baseline metal levels in foraging caribou. |
| Term or Condition: | The Proponent shall undertake monitoring of baseline metal levels in organ tissue from caribou harvested within the local study area, prior to commencing operations. The Proponent is strongly encouraged to coordinate with local Hunters and Trappers Organizations regarding procurement of harvested caribou organs. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

***Commentary:** It is anticipated that the Terrestrial Environment Working Group members will provide guidance to the Proponent on the specific tissues studied, the methods for testing and mechanics of obtaining samples.*

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| Term and Condition No. | 36 |
| Category: | Vegetation – Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To monitor for project-induced effects to foraging caribou. |
| Term or Condition: | The Proponent shall establish an on-going monitoring program for vegetation species used as caribou forage (such as lichens) near Project development areas, prior to commencing operations. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB . |

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| Term and Condition No. | 37 |
| Category: | Vegetation – Monitoring |
| Responsible Parties: | The Proponent, Government of Nunavut Department of Environment |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent establishment of invasive species. |
| Term or Condition: | The Proponent shall incorporate protocols for monitoring for the potential introduction of invasive vegetation species (e.g. surveys of plant populations in previously disturbed areas) into its Terrestrial Environment and Monitoring Plan. Any introductions of non-indigenous plant species must be promptly reported to the Government of Nunavut Department of Environment. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 38 |
| Category: | Vegetation – Adaptive Management |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts to vegetation abundance, diversity and health. |
| Term or Condition: | The Proponent shall review, on an annual basis, all monitoring information and the vegetation mitigation and management plans developed under its Environmental Management System, Terrestrial Environment and Monitoring Plan (TEMMP) and adjust such plans as may be required to effectively prevent or reduce the potential for significant adverse project effects on vegetation abundance, diversity and health. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB . |

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| Term and Condition No. | 39 |
| Category: | Vegetation – Reclamation and Revegetation |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent erosion and promote progressive revegetation of disturbed areas. |
| Term or Condition: | The Proponent shall develop a progressive revegetation program for disturbed areas that are no longer required for operations, such program to incorporate measures for the use of test plots, reseeding and replanting of native plants as necessary. It is further recommended that this program be directly associated with the management plans for erosion control established for the Project. |
| Reporting Requirements: | To be provided to the NIRB for review and comment at least 60 days prior to commencement of construction activities. |

***Commentary:** It is understood that revegetation may not be possible for all those areas disturbed by project development, and that the requirements of progressive revegetation are in relation to only those “disturbed areas” that had vegetative cover prior to project development.*

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| Term and Condition No. | 40 |
| Category: | Vegetation – Reclamation and Revegetation |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent erosion and promote progressive revegetation of disturbed areas. |

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| Term or Condition: | The Proponent shall include revegetation strategies in its Site Reclamation Plan that support progressive reclamation and that promote natural revegetation and recovery of disturbed areas compatible with the surrounding natural environment. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

***Commentary:** It is understood that revegetation may not be possible for all those areas disturbed by project development, and that the requirements of progressive revegetation are in relation to only those “disturbed areas” that had vegetative cover prior to project development.*

Freshwater Aquatic Environment including Biota and Habitat

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| Term and Condition No. | 41 |
| Category: | Freshwater Aquatic Environment – Setbacks |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts of runoff into freshwater aquatic habitat. |
| Term or Condition: | Unless otherwise approved by regulatory authorities, the Proponent shall maintain a minimum 100-metre naturally-vegetated buffer between the high-water mark of any fish-bearing water bodies and any permanent quarries with potential for acid rock drainage or metal leaching. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 42 |
| Category: | Freshwater Aquatic Environment – Setbacks |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts of runoff into freshwater aquatic habitat. |
| Term or Condition: | The Proponent shall maintain minimum a 30-metre naturally-vegetated buffer between the mining operation and adjacent water bodies. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

***Commentary:** As used in the above Term and Condition, “mining operation” is intended to include the site of active ore removal, including excavations resulting from the extraction of ore but does not include quarries, transportation corridors or other mine infrastructure.*

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| Term and Condition No. | 43 |
| Category: | Freshwater Aquatic Environment – Drainage |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To mitigate impacts of runoff into freshwater aquatic habitat. |

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| Term or Condition: | Prior to the start of construction, the Proponent must submit a Site Drainage and Silt Control Plan to the appropriate regulatory authorities for approval. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 44 |
| Category: | Freshwater Aquatic Environment – Explosives |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts of explosives on freshwater aquatic habitat. |
| Term or Condition: | The Proponent shall meet or exceed the guidelines set by Fisheries and Oceans Canada for blasting thresholds and implement practical and effective measures to ensure that residue and by-products of blasting do not negatively affect fish and fish habitat. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 45 |
| Category: | Freshwater Aquatic Environment – General |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts to freshwater aquatic habitat. |
| Term or Condition: | The Proponent shall adhere to the No-Net-Loss principle at all phases of the project to prevent or mitigate direct or indirect fish and fish habitat losses. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 46 |
| Category: | Freshwater Aquatic Environment – Drainage |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate impacts to freshwater aquatic habitat. |
| Term or Condition: | The Proponent shall ensure that runoff from fuel storage and maintenance facility areas, sewage and wastewater other facilities responsible for generating liquid effluent and runoff meet discharge requirements. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 47 |
| Category: | Freshwater Aquatic Environment – Watercourses |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent blockages or restrictions to fish passage. |
| Term or Condition: | The Proponent shall ensure that all Project infrastructure in watercourses are designed and constructed in such a manner that they do not unduly prevent and limit the movement of water in fish bearing streams and rivers. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 48 |
| Category: | Freshwater Aquatic Environment – Explosives |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association, Fisheries and Oceans Canada |
| Project Phase: | Construction, Operations |
| Objective: | To mitigate impacts to freshwater aquatic habitat. |
| Term or Condition: | The Proponent shall engage with Fisheries and Oceans Canada and the Qikiqtani Inuit Association in exploring possible Project specific thresholds for blasting that would exceed the requirements of Fisheries and Oceans Canada's <i>Guidelines for the Use of Explosives In or Near Canadian Fisheries Waters</i> (D.G. Wright and G.E. Hopky, 1998). |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 48 (a) |
| Category: | Freshwater Aquatic Environment – Arctic char |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To determine presence and health of arctic char in freshwater aquatic habitat. |
| Term or Condition: | The Proponent shall develop plans to conduct additional surveys for the presence of arctic char in freshwater bodies and ongoing monitoring of arctic char health where applicable, within watersheds proximal to the mine, tote road and Milne Inlet Port project development areas, including but not limited to, Phillips Creek, Tugaat and Qurluktuk. The Proponent shall consult with the MHTO regarding the design, timing, and location of proposed surveys and ongoing monitoring. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Terrestrial Wildlife and Habitat

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| Term and Condition No. | 49 |
| Category: | Terrestrial Wildlife and Wildlife Habitat – Terrestrial Environment Working Group |
| Responsible Parties: | The Proponent, the Qikiqtani Inuit Association, the Government of Nunavut, Environment Canada, and any other agencies or interested parties as determined by the members to be appropriate |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | The TEWG will provide direction and guidance to the Proponent regarding: adding to baseline information during construction and before project operations commence; monitoring and reporting regarding effects occurring during operations; and providing advice regarding changes that may be required to make sure the management of negative impacts is effective and that lasting damage is prevented. |
| Term or Condition: | The Proponent shall establish a Terrestrial Environment Working Group ("TEWG") which will act as an advisory group in connection with mitigation measures for the protection of the terrestrial environment and in connection with its Environmental Effects Monitoring Program, as it pertains to the terrestrial environment. Members may consider the draft terms of reference for the TEWG filed in the Final Hearing, but they are not bound by them. The role of the TEWG is not intended to either duplicate or to affect the exercise of regulatory authority by appropriate government agencies and departments. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 50 |
| Category: | Terrestrial Wildlife and Habitat - General |
| Responsible Parties: | The Proponent and other Parties as appropriate |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure appropriate and responsive adaptive management. |
| Term or Condition: | The Proponent shall continue to develop and implement Project-specific monitoring for the terrestrial environment, and will demonstrate appropriate refinements to design, incorporation of analytical methods and elaboration of methodologies. The monitoring plan shall contain clear thresholds to allow for the assessment of long-term trends and cumulative effects where project interactions are identified. Coordination and cooperation will be required where data collection, analysis and interpretation, or responsibility for mitigation and management requires the efforts of multiple parties (e.g., government, Qikiqtani Inuit Association, communities). |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 51 |
| Category: | Terrestrial Wildlife and Habitat - General |
| Responsible Parties: | The Proponent and/or TWEWG |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To promote coordination of monitoring efforts. |
| Term or Condition: | The Proponent, either directly or as part of the TEWG, shall consider and, where appropriate, cooperate with relevant regional and/or community-based monitoring initiatives that raise issues or produce information pertinent to mitigating project-induced impacts. The Proponent shall give special consideration for supporting regional studies of population health and harvest programs for North Baffin caribou which help address areas of uncertainty for Project impact predictions. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 52 |
| Category: | Terrestrial Wildlife and Habitat - Caribou |
| Responsible Parties: | The Proponent, TEWG |
| Project Phase: | Construction |
| Objective: | To ensure best practices are used for caribou protection. |
| Term or Condition: | Within 3 months of issuance of the Project Certificate, the Proponent shall initiate design, and develop the timeline to test and implement means of deterring caribou from pits and other hazardous areas. A review of best practices and techniques will be undertaken at other Northern mines where interactions with caribou occur. Considerations should include temporary ribbon placement, inuksuks, or fencing and subsequent monitoring for effectiveness. These activities shall be reported back to the Terrestrial Environment Working Group. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister; results to be reported back to the Terrestrial Environment Working Group. |

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| Term and Condition No. | 53 |
| Category: | Terrestrial Wildlife and Habitat - Caribou |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To mitigate impacts to caribou from Project-related traffic. |
| Term or Condition: | <p>The Proponent shall demonstrate consideration for the following:</p> <ul style="list-style-type: none"> a. Steps taken to prevent caribou mortality and injury as a result of train and vehicular traffic, including operational measures meant to maximize the potential for safe traffic relative to operations on the railway, Milne Inlet tote road and associated access roads. <ul style="list-style-type: none"> i. Specific measures intended to address the reduced effectiveness of visual protocols for the Milne Inlet Tote |

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| | <p>Road and access roads/trails during times of darkness and low visibility must be included.</p> <ul style="list-style-type: none"> b. Monitoring and mitigation measures at points where the railway, roads, trails and flight paths pass through caribou calving areas, particularly during caribou calving times. The details of these monitoring and mitigation measures shall be developed in conjunction with the Terrestrial Environment Working Group. c. Evaluation of the effectiveness of proposed caribou crossings over the railway, Milne Inlet tote road and access roads as well as the appropriate number. d. Development of a surveillance system along the railway corridor to identify the presence of caribou in proximity to the train tracks and operational protocols for the train to avoid collisions and enable caribou to cross the train tracks unimpeded. e. Protocols for documentation and reporting of all caribou collisions and mortalities, as well as mechanisms for adaptive management responses designed to prevent further such interactions. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 54 |
| Category: | Terrestrial Wildlife and Habitat - Caribou |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction – within six (6) months of issuance of Project Certificate |
| Objective: | To Update the Terrestrial Environmental Management and Monitoring Plan |
| Term or Condition: | <p>The Proponent shall provide an updated Terrestrial Environmental Management and Monitoring Plan which shall include, but not be limited to the following:</p> <ul style="list-style-type: none"> a. Details of the methods and rationale for conducting monitoring prior to the commencement of construction; b. Monitoring for caribou presence and behavior during railway and Tote Road construction; c. Description and justification of statistical design or other means of determining effect and proposed analyses to support the conclusions drawn from monitoring impacts of the mine and related infrastructure on wildlife; d. Details of monitoring and mitigation activities, which should be established in collaboration with the Terrestrial Environment Working Group and are expected to include: <ul style="list-style-type: none"> i. Dust fall (fugitive and Total Suspended Particulates), that addresses methods to reduce risk to caribou forage from dust fall; ii. Snow track surveys during construction and the use of video-surveillance to improve the predictability of caribou exposure to the railway and Tote Road. Using the result of this information, an early warning system for caribou on the railway and Tote Road shall be developed for operation. |

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| | <ul style="list-style-type: none"> e. Details of monitoring thresholds related to level of mitigation and management; and f. Details of a comprehensive hunter harvest survey to determine the effect on caribou populations and potential effects on caribou behaviour resulting from increased human access caused by upgrades to the Milne Inlet tote road (and any other roads if they are shifted from private to public use) and increase local knowledge of the mine site, including establishing pre-construction baseline harvesting data. |
| Reporting Requirements: | Plan to be submitted to the NIRB and the TEWG within 6 months of issuance of a Project Certificate. |

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| Term and Condition No. | 55 |
| Category: | Terrestrial Wildlife and Habitat - Wolves |
| Responsible Parties: | The Proponent, Government of Nunavut Department of Environment |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate potential impacts to wolves. |
| Term or Condition: | <p>The Proponent shall develop an adaptive management plan applicable to wolves and wolf habitat in collaboration with the Government of Nunavut-Department of Environment (GN-DOE) to ensure compliance with the <i>Nunavut Wildlife Act</i>. Consideration must be given to the following:</p> <ul style="list-style-type: none"> a. Monitoring for active wolf dens within a 10 km radius from the mine site, under the direction and prior approval of the GN DOE, and reporting the results through NIRB's Annual Reports on terrestrial wildlife in the Potential Development Area (PDA); b. Estimating the available (glacio-fluvial materials) esker habitat within the Regional Study Area/PDA and identifying such habitat as ecologically sensitive; c. Developing "wolf indices" for presence/abundance of wolves (by conducting studies) to set a baseline pre-construction baseline; and d. Ensuring that wolf monitoring is capable of determining the relative abundance and distribution of wolves in the Project Development Area over time. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 56 |
| Category: | Terrestrial Wildlife and Habitat – Wildlife Habitat |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure progressive reclamation of disturbed wildlife habitat. |
| Term or Condition: | The Proponent shall develop a strategy for the recovery of terrestrial wildlife habitat in a progressive manner that is consistent with the <i>Nunavut</i> |

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| | <i>Wildlife Act</i> . Overall, this will require the integration of a decision-making process and the identification of mitigation responses to cumulative impacts on caribou survival, breeding propensity, and population dynamics. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 57 |
| Category: | Terrestrial Wildlife and Habitat - Reporting |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate and monitor for impacts to wildlife. |
| Term or Condition: | <p>The Proponent shall report annually regarding its terrestrial environment monitoring efforts, with inclusion of the following information:</p> <ul style="list-style-type: none"> a. Description of all updates to terrestrial ecosystem baseline data; b. A description of the involvement of Inuit in the monitoring program; c. An explanation of the annual results relative to the scale of the natural variability of Valued Ecosystem Components in the region, as described in the baseline report; d. A detailed presentation and analysis of the distribution relative to mine structures and activities for caribou and other terrestrial mammals observed during the surveys and incidental sightings; e. Results of the annual monitoring program, including field methodologies and statistical approaches used to support conclusions drawn; f. A summary of the chronology and level of mine activities (such as vehicle frequency and type); g. An assessment and presentation of annual environmental conditions including timing of snowmelt, green-up, as well as standard weather summaries; and h. A discussion of any proposed changes to the monitoring survey methodologies, statistical approaches or proposed adaptive management stemming from the results of the monitoring program. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB |

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| Term and Condition No. | 58 |
| Category: | Terrestrial Wildlife and Habitat - Reporting |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate and monitor for impacts to wildlife. |
| Term or Condition: | <p>Within its annual report to the NIRB, the Proponent shall incorporate a review section which includes:</p> <ul style="list-style-type: none"> a. An examination for trends in the measured natural variability of Valued Ecosystem Components in the region relative to the baseline reporting; |

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| | <ul style="list-style-type: none"> b. A detailed analysis of wildlife responses to operations with emphasis on calving and post-calving caribou behaviour and displacements (if any), and caribou responses to and crossing of the railway, the Milne Inlet Tote Road and associated access roads/trails; c. A description of the extent of dust fall based on measured levels of dust fall (fugitive and finer particles such as TSP) on lichens and blueberries, and ash content of caribou fecal pellets; d. A demonstration and description of how the monitoring results, including the railway, road traffic, air traffic and dustfall contribute to cumulative effects of the project; e. Any proposed changes to the monitoring survey methodologies, statistical approaches or proposed adaptive management stemming from the results of the monitoring program; f. Any updates to information regarding caribou migration trails. Maps of caribou migration trails, primarily obtained through any new collar and snow tracking data, shall be updated (at least annually) in consultation with the Qikiqtani Inuit Association and affected communities, and shall be circulated as new information becomes available. |
| Reporting Requirements: | To be included in the Annual Report submitted to the NIRB |

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| Term and Condition No. | 59 |
| Category: | Terrestrial Wildlife and Habitat – Aircraft Disturbances |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate aircraft disturbance to wildlife and Inuit harvesting. |
| Term or Condition: | The Proponent shall ensure that aircraft maintain, whenever possible (except for specified operational purposes such as drill moves, take offs and landings), and subject to pilot discretion regarding aircraft and human safety, a cruising altitude of at least 610 metres during point to point travel when in areas likely to have migratory birds, and 1,000 metres vertical and 1,500 metres horizontal distance from observed concentrations of migratory birds (or as otherwise prescribed by the Terrestrial Environment Working Group) and use flight corridors to avoid areas of significant wildlife importance. The Proponent, in collaboration with the Terrestrial Environment Working Group shall develop a program or specific measures to ensure that employees and subcontractors providing aircraft services to the Project are respectful of wildlife and Inuit harvesting that may occur in and around project areas. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: As indicated in the heading and discussion of this section in the Final Hearing Report, the intention of this section is to mitigate aircraft disturbance to wildlife, (including, but not limited to migratory birds, although these are specifically mentioned in the term and condition). It is also

anticipated that the Terrestrial Environment Working Group may provide the Proponent with additional direction regarding minimum flight altitude requirements that may differ from these requirements. It is further recognized that the flight altitudes listed are provided as guidance only, and that for compliance purposes, the Proponent shall comply with flight altitude restrictions as may be prescribed by Transport Canada. It is also noted that Term and Condition #71 prescribes a slightly more stringent minimum altitude for migratory birds and unless the Terrestrial Environment Working Group provides additional direction, the minimums set out in Condition #71 will govern with respect to migratory birds specifically.

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| Term and Condition No. | 60 |
| Category: | Terrestrial Wildlife and Habitat – Explosives |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To mitigate impacts to wildlife from explosives. |
| Term or Condition: | Prior to construction, the Proponent shall develop a detailed blasting program to minimize the effects of blasting on terrestrial wildlife that includes, but is not limited to the restriction of blasting when migrating caribou, sensitive local carnivores or birds may be negatively affected. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 61 |
| Category: | Terrestrial Wildlife and Habitat – Operations (General) |
| Responsible Parties: | The Proponent, TEWG |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate Project impacts to wildlife. |
| Term or Condition: | Whenever practical and not causing a human safety issue, a stop work policy shall be implemented when wildlife in the area may be endangered by the work being carried out. An operational definition of ‘endangered’ shall be provided by the Terrestrial Environment Working Group. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 62 |
| Category: | Terrestrial Wildlife and Habitat – Operations (General) |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent increased harvesting pressure on wildlife. |
| Term or Condition: | The Proponent shall prohibit project employees from transporting firearms to site and from operating firearms in project areas for the purpose of wildlife harvesting. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 63 |
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| Category: | Terrestrial Wildlife and Habitat – Public Engagement |
| Responsible Parties: | The Proponent, local Hunters and Trappers Organizations |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To keep communities up to date with Project operations. |
| Term or Condition: | The Proponent shall liaise with local Hunters and Trappers Organizations in advance of carrying out terrestrial wildlife surveys. At a minimum, The Proponent shall also meet annually in person with Hunters and Trappers Organizations to discuss wildlife monitoring and mitigation plans and address community concerns regarding wildlife interactions. The Proponent may be required to facilitate these meetings through payment of honoraria and meeting costs. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 64 |
| Category: | Terrestrial Wildlife and Habitat – Waste Management |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent human-carnivore interactions. |
| Term or Condition: | <p>The Proponent shall ensure that its Environment Protection Plan incorporates waste management provisions to prevent carnivores from being attracted to the Project site(s). Consideration must be given to the following measures:</p> <ul style="list-style-type: none"> a. Installation of an incinerator beside the kitchen that will help to keep the food waste management process simple and will minimize the opportunity for human error (i.e. storage of garbage outside, hauling in a truck (odours remain in truck), hauling some distance to a landfill site, incomplete combustion at landfill, fencing of landfill, etc.); and b. Installation of solid carnivore-proof skirting on all kitchen and accommodation buildings (i.e., heavy-duty steel mesh that would drop down from the edge of the buildings/trailers and buried about a half meter into the ground to prevent animals from digging under the skirting). |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: The use of the phrase “consideration must be given” requires that if the Proponent chooses not to implement the suggested measures, the Proponent must provide an indication of the rationale for not implementing the suggested measure and for choosing an alternative measure.

Birds

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| Term and Condition No. | 65 |
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| Category: | Birds – Awareness |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent disturbance to birds and bird habitat. |
| Term or Condition: | The Proponent shall ensure all employees working at project sites receive awareness training regarding the importance of avoiding known nests and nesting areas and large concentrations of foraging and moulting birds. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 66 |
| Category: | Birds – Species at Risk |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to sensitive bird species. |
| Term or Condition: | If Species at Risk or their nests and eggs are encountered during Project activities or monitoring programs, the primary mitigation measure must be avoidance. The Proponent shall establish clear zones of avoidance on the basis of the species-specific nest setback distances outlined in the Terrestrial Environment Management and Monitoring Plan. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 67 |
| Category: | Birds – Species at Risk |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to sensitive bird species. |
| Term or Condition: | The Proponent shall ensure that the mitigation and monitoring strategies developed for Species at Risk are updated as necessary to maintain consistency with any applicable status reports, recovery strategies, action plans and management plans that may become available during the duration of the Project. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 68 |
| Category: | Birds – Project Infrastructure |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent potential injuries to birds. |
| Term or Condition: | The Proponent shall ensure flashing red, red strobe or white strobe lights and guy-wire deterrents are used on communications towers established for |

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| | the Project. Consideration should also be given to reducing lighting when possible in areas where it may serve as an attractant to birds or other wildlife. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

***Commentary:** The first sentence in the above term and condition refers to the use of appropriate lighting to make communications and guy-wires visible to birds to ensure birds can avoid such obstacles, while the second sentence indicates that in other circumstances, where lighting of project areas could serve as an attractant to birds or other wildlife, consideration should be given to reducing such lighting.*

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| Term and Condition No. | 69 |
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| Category: | Birds – Construction/Clearing Activities |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent nesting by birds in active Project areas. |
| Term or Condition: | Prior to bird migrations and commencement of nesting, the Proponent shall identify and install nesting deterrents (e.g. flagging) to discourage birds from nesting in areas likely to be disturbed by construction/clearing activities taking place during the nesting season. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 70 |
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| Category: | Birds – Construction/Clearing Activities |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to birds and nesting areas. |
| Term or Condition: | The Proponent shall protect any nests found (or indicated nests) with a buffer zone determined by the setback distances outlined in its Terrestrial Environment Mitigation and Monitoring Plan, until the young have fledged. If it is determined that observance of these setbacks is not feasible, the Proponent will develop nest-specific guidelines and procedures to ensure bird's nests and their young are protected. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 71 |
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| Category: | Birds – Flight Altitude Requirements |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate aircraft disturbance to birds. |
| Term or Condition: | Subject to safety requirements, the Proponent shall require all project related aircraft to maintain a cruising altitude of at least: |

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| | <ul style="list-style-type: none"> a. 650 m during point to point travel when in areas likely to have migratory birds b. 1100 m vertical and 1500 m horizontal distance from observed concentrations of migratory birds c. 1100 m over the area identified as a key site for moulting snow geese during the moulting period (July-August), and if maintaining this altitude is not possible, maintain a lateral distance of at least at least 1500 m from the boundary of this site. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: As noted under the Commentary in Term and Condition #59 the Terrestrial Environment Working Group may provide the Proponent with additional direction regarding minimum flight altitude requirements that may differ from these requirements, but unless the Terrestrial Environment Working Group provides additional direction, the minimum flight altitudes set out above will govern with respect to migratory birds specifically.

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| Term and Condition No. | 72 |
| Category: | Birds – Flight Altitude Requirements |
| Responsible Parties: | The Proponent, Transport Canada |
| Project Phase: | Construction, Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate aircraft disturbance to birds. |
| Term or Condition: | The Proponent shall ensure that pilots are informed of minimum cruising altitude guidelines and that a daily log or record of flight paths and cruising altitudes of aircraft within all Project Areas is maintained and made available for regulatory authorities such as Transport Canada to monitor adherence and to follow up on complaints. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 73 |
| Category: | Birds – Monitoring |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Organization, TEWG, MEWG |
| Project Phase: | Construction, Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To develop appropriate mitigation and monitoring of impacts to birds. |
| Term or Condition: | The Proponent shall develop detailed and robust mitigation and monitoring plans for migratory birds, reflecting input from relevant agencies, the Qikiqtani Inuit Organization and communities as part of the Terrestrial Environment Working Group and to the extent applicable the Marine Environment Working Group. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 74 |
| Category: | Birds – Monitoring |

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| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To develop appropriate mitigation and monitoring of impacts to birds. |
| Term or Condition: | The Proponent shall continue to develop and update relevant monitoring and management plans for migratory birds under the Proponent's Environmental Management System, Terrestrial Environment Mitigation and Monitoring Plan prior to construction. The key indicators for follow up monitoring under this plan will include: peregrine falcon, gyrfalcon, common and king eider, red knot, seabird migration and wintering, and songbird and shorebird diversity. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 75 |
| Category: | Birds – Monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To assess the extent of terrestrial habitat loss. |
| Term or Condition: | The Proponent's monitoring program shall assess and report, on annual basis, the extent of terrestrial habitat loss due to the Project to verify impact predictions and provide updated estimates of the total project footprint. |
| Reporting Requirements: | To be provided within the Annual Report to the NIRB. |

Marine Environment, Marine Water/Ice and Sediment Quality

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| Term and Condition No. | 76 |
| Category: | Marine Environment – General |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To mitigate potential impacts to the marine environment. |
| Term or Condition: | The Proponent shall develop a comprehensive Environmental Effects Monitoring Program to address concerns and identify potential impacts of the Project on the marine environment. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Original Term and Condition No. | 77 |
| Category: | Marine Environment – Working Group |
| Responsible Parties: | The Proponent, Environment Canada, Fisheries and Oceans Canada, the Government of Nunavut, the Qikiqtani Inuit Association and interested parties. |

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| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | The MEWG will consult with, and provide advice and recommendations to the Proponent in connection with mitigation measures for the protection of the marine environment, monitoring of effects on the marine environment and the consideration of adaptive management plans. The role of the MEWG is not intended to either duplicate or to affect the exercise of regulatory authority by appropriate government agencies and departments. |
| Term or Condition: | A Marine Environment Working Group ("MEWG") shall be established to serve as an advisory group in connection with mitigation measures for the protection of the marine environment, and in connection with the Project Environmental Effects Monitoring program, as it pertains to the marine environment. Membership on the MEWG will include the Proponent, Environment Canada, Fisheries and Oceans Canada, the Government of Nunavut, the Qikiqtani Inuit Association and other agencies or interested parties as determined to be appropriate by these key members. Makivik Corporation shall also be entitled to membership on the MEWG at its election. The MEWG members may consider the draft terms of reference for the MEWG filed in the Final Hearing, but they are not bound by them. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| REVISED Term and Condition No. | 77 |
| Category: | Marine Environment – Working Group |
| Responsible Parties: | The Proponent, Environment Canada, Fisheries and Oceans Canada, the Government of Nunavut, the Qikiqtani Inuit Association and interested parties. |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | The MEWG will consult with, and provide advice and recommendations to the Proponent in connection with mitigation measures for the protection of the marine environment, monitoring of effects on the marine environment and the consideration of adaptive management plans. The role of the MEWG is not intended to either duplicate or to affect the exercise of regulatory authority by appropriate government agencies and departments. |
| Term or Condition: | A Marine Environment Working Group ("MEWG") shall be established to serve as an advisory group in connection with mitigation measures for the protection of the marine environment, and in connection with the Project Environmental Effects Monitoring program, as it pertains to the marine environment. Membership on the MEWG will include the Proponent, Environment Canada, Fisheries and Oceans Canada, Parks Canada, the Government of Nunavut, the Qikiqtani Inuit Association, the Mittimatilik Hunters and Trappers Organization, and other agencies or interested parties as determined to be appropriate by these key members. Makivik Corporation shall also be entitled to membership on the MEWG at its election. The MEWG members may consider the draft terms of reference |

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| | for the MEWG filed in the Final Hearing, but they are not bound by them. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 78 |
| Category: | Marine Environment – Ice Breaking and Shipping |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To obtain accurate and current ice information. |
| Term or Condition: | The Proponent shall update the baseline information for landfast ice using a long-term dataset (28 years), and with information on inter-annual variation. The analysis for pack and landfast ice shall be updated annually using annual sea ice data (floe size, cover, concentration) and synthesized and reported in the most appropriate management plan. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: The annual update for pack and landfast ice includes not only identification of naturally-occurring effects, but also must include information on effects on floe size, cover and concentration of pack and landfast ice that may be attributed to icebreaking activities.

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| Term and Condition No. | 79 |
| Category: | Marine Environment – Ice Breaking and Shipping |
| Responsible Parties: | The Proponent, Canadian Hydrographic Services |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To assist in the development of nautical charts for Canadian waters. |
| Term or Condition: | The Proponent shall provide the Canadian Hydrographic Services with bathymetric data and other relevant information collected in support of Project shipping where possible, to assist in the development of nautical charts for Canadian waters. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 80 |
| Category: | Marine Environment – Ice Breaking and Shipping |
| Responsible Parties: | The Proponent, Canadian Hydrographic Services |
| Project Phase: | Construction |
| Objective: | To identify areas of risk along the shipping route. |
| Term or Condition: | Prior to commercial shipping of iron ore, the Proponent shall conduct a detailed risk assessment for Project-related shipping accidents, noting areas along the ship tracks where vessels may be particularly vulnerable to environmental conditions such as sea ice, and any seasonal differences in risk. This assessment shall inform mitigation and adaptive management plans. |

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| Reporting Requirements: | To be developed following approval of the Project by the Minister. |
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| Term and Condition No. | 81 |
| Category: | Marine Environment – Shoreline Effects and Sediment Redistribution |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To mitigate potential shoreline effects from shipping. |
| Term or Condition: | The Proponent shall reassess the potential for ship wake impacts to cause coastal change following any further changes to the proposed shipping routes. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 82 |
| Category: | Marine Environment – Shoreline Effects and Sediment Redistribution |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To mitigate potential shoreline effects from shipping. |
| Term or Condition: | The Proponent is strongly encouraged to have its ore carriers subjected to sea trials to measure wake characteristics at various vessel speeds and distances from the vessel. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 83 |
| Category: | Marine Environment – Shoreline Effects and Sediment Redistribution |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To monitor relative sea level and storm surges. |
| Term or Condition: | The Proponent shall install tidal gauges at the Steensby Inlet Port and Milne Inlet Port sites to monitor relative sea level and storm surges. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: Note that the requirement for installation of tidal gauges may be subject to the Navigation Protection Program.

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| Term and Condition No. | 83(a) |
| Category: | Marine Environment – Shoreline Effects and Sediment Redistribution |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To identify potential for and conduct monitoring to identify effects of sediment redistribution associated with construction and operation of the Milne Port. |
| Term or Condition: | The Proponent shall conduct hydrodynamic modelling in the Milne Inlet |

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| | Port area to determine the potential impacts arising from disturbance to sediments including re-suspension and subsequent transport and deposition of sediment. The modelling results shall be used to update the marine water and sediment quality monitoring and mitigation program to include activities associated with the construction and operation of the Milne Inlet Port. The monitoring program shall include an ongoing assessment of the potential introduction of metals that bio-accumulate in the marine food chain. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 84 |
| Category: | Marine Environment – Shoreline Effects and Sediment Redistribution |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To prevent sediment redistribution along the shipping route. |
| Term or Condition: | The Proponent shall update its sediment redistribution modeling once ship design has been completed and sampling should be undertaken to validate the model and to inform sampling sites and the monitoring plan. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 85 |
| Category: | Marine Environment – Shoreline Effects and Sediment Redistribution |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To prevent sediment redistribution along the shipping route. |
| Term or Condition: | The Proponent shall develop a monitoring plan to verify its impact predictions associated with sediment redistribution resulting from propeller wash in shallow water locations along the shipping route. If monitoring detects negative impacts from sediment redistribution, additional mitigation measures will need to be developed and implemented. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 86 |
| Category: | Marine Environment – Ballast Water |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To update ballast water discharge impact predictions. |
| Term or Condition: | Prior to commercial shipping of iron ore, the Proponent shall use more detailed bathymetry collected from Steensby Inlet and Milne Inlet to model the anticipated ballast water discharges from ore carriers. The results from this modeling shall be used to update ballast water discharge impact predictions and should account for density dependent flow and annual timescales over the project life. Additional sampling should also be |

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| | undertaken to validate the model and to inform sampling sites and the monitoring plan. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 87 |
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| Category: | Marine Environment – Ballast Water |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent invasive species introductions resulting from Project shipping. |
| Term or Condition: | The Proponent shall develop a detailed monitoring program at a number of sites over the long term to evaluate changes to marine habitat and organisms and to monitor for non-native introductions resulting from Project-related shipping. This program needs to be able to detect changes that may have biological consequences and should be initiated several years prior to any ballast water discharge into Steensby Inlet and Milne Inlet to collect sufficient baseline data and should continue over the life of the Project. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 88 |
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| Category: | Marine Environment – Ballast Water |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent invasive species introductions resulting from Project shipping. |
| Term or Condition: | <p>Prior to commercial shipping of iron ore and in conjunction with the Marine Environment Working Group, the Proponent shall provide an updated risk analysis regarding ballast water discharge to assess the adequacy of treatment and implications on the receiving environment. This risk analysis shall consider, but not be limited to:</p> <ul style="list-style-type: none"> a. Invasive species; b. Seasonal oceanography; c. Ballast water quality and quantity; d. Receiving water quality; e. Residual physical, chemical, and/or biological effects; and f. Any risk assessment analysis regarding ballast water exchange and treatment efficacy in arctic waters. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 89 |
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| Category: | Marine Environment – Ballast Water |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, |

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| | Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine water quality resulting from ballast water exchange. |
| Term or Condition: | The Proponent shall develop and implement an effective ballast water management program that may include the treatment and monitoring of ballast water discharges in a manner consistent with applicable regulations and/or exceed those regulations if they are determined to be ineffective for providing the desired and predicted results. The ballast water management program shall include, without limitation, a provision that requires ship owners to test their ballast water to confirm that it meets the salinity requirements of the applicable regulations prior to discharge at the Milne Port, and a requirement noting that the Proponent, in choosing shipping contractors will, whenever feasible, give preference to contractors that use ballast water treatment in addition to ballast water exchange. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 90 |
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| Category: | Marine Environment – Ballast Water |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to marine water quality resulting from ballast water exchange. |
| Term or Condition: | The Proponent shall incorporate into its Shipping and Marine Mammals Management Plan provisions to achieve compliance with the requirements under the International Convention for the Control and Management of Ship's Ballast Water and Sediment (2004) or its replacement and as implemented by the <i>Canadian Ballast Water and Control Regulations</i> as may be amended from time to time. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 91 |
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| Category: | Marine Environment – Ballast Water |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to marine water quality in Steensby Inlet and Milne Inlet. |
| Term or Condition: | The Proponent shall develop a detailed monitoring plan for Steensby Inlet and Milne Inlet for fouling that complies with all applicable regulatory requirements and guidelines as issued by Transport Canada, and includes sampling areas on ships where antifouling treatment is not applied such as the areas where non-native species are most likely to occur. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: The term “fouling” as used in the context of this term and condition refers specifically to hull fouling on ships.

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| Term and Condition No. | 92 |
| Category: | Marine Environment – Spill Prevention |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure adequate spill response capacity. |
| Term or Condition: | The Proponent shall ensure that it maintains the necessary equipment and trained personnel to respond to all sizes of potential spills associated with the Project in a self sufficient manner. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 93 |
| Category: | Marine Environment – Spill Prevention |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to the marine environment at Steensby Inlet. |
| Term or Condition: | Prior to construction, based on vessel selection and if so required, the Proponent shall reassess the risk analysis of using vessel-based fuel storage, including the potential environmental impacts of containment failure under a range of winter ice conditions, how a spill might spread and the impact of fuel if it does not volatilize to the atmosphere. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 94 |
| Category: | Marine Environment – Spill Prevention |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To promote public awareness of Project activities. |
| Term or Condition: | The Proponent shall consult directly with affected communities regarding its plans for over-wintering of fuel in Steensby Inlet, with discussion topics to include descriptions of the duration of proposed activities, vessel type, spill preparedness and emergency response protocols, environmental impact predictions and answers to community member questions. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 95 |
| Category: | Marine Environment – Spill Prevention |
| Responsible Parties: | The Proponent, Transport Canada |
| Project Phase: | Construction |
| Objective: | To prevent impacts to the marine environment at Steensby Inlet. |
| Term or Condition: | The Proponent shall meet or exceed all regulatory regulations and requirements as apply to the practice of overwintering a fuel vessel at Steensby Inlet, with reporting to the NIRB and Transport Canada. |

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| Reporting Requirements: | To be developed following approval of the Project by the Minister. |
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| Term and Condition No. | 96 |
| Category: | Marine Environment – Spill Prevention |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To ensure adequate oversight of Project activities is occurring. |
| Term or Condition: | The Proponent will update the NIRB on the results of all compliance monitoring and site inspections undertaken by government agencies for the overwintering of a fuel vessel in Steensby Inlet. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 97 |
| Category: | Marine Environment – Spill Prevention |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to the marine environment along the shipping route. |
| Term or Condition: | <p>Prior to the commercial shipping of iron ore, the Proponent shall conduct fuel spill dispersion modeling that will, at a minimum, consider:</p> <ul style="list-style-type: none"> a. Modeling of oil spills for both the Northern and Southern Shipping Routes, in representative locations, identified by the Proponent, in consultation with the Marine Environment Working Group along both Shipping Routes, and including : <ul style="list-style-type: none"> i. Pinch points; ii. The approaches into Steensby Inlet and Milne Inlet; iii. Shallow water and shorelines; and, iv. Areas that have been identified as having high flows and/or high concentrations of marine mammals, marine fish or seabirds. b. Open water and, where applicable, ice-covered conditions; c. Spill volumes up to and including loss of a full tanker cargo; and, d. Differences in the quantity and properties of each type of bulk fuel transported by vessels when they are at, or in transit to, the ports at Steensby Inlet and Milne Inlet. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 98 |
| Category: | Marine Environment – Spill Prevention |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to the marine environment along the shipping route. |
| Term or Condition: | The Proponent shall incorporate the results of revised fuel spill dispersion modeling into its impact predictions for the marine environment and its spill |

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| | response and emergency preparedness plans. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Marine Wildlife and Marine Habitat

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| Term and Condition No. | 99 |
| Category: | Marine Environment – Supplemental Baseline Assessments |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction |
| Objective: | To supplement baseline information and improve predictions for potential impacts to marine wildlife. |
| Term or Condition: | <p>The Proponent, working with the Marine Environment Working Group, shall consider and identify priorities for conducting the following supplemental baseline assessments:</p> <ul style="list-style-type: none"> a. Establish shipping season, inter-annual baseline in Steensby Inlet and Milne Inlet that enables effective monitoring of physical and chemical effects of ballast water releases, sewage outfall, and bottom scour by ship props, particularly downslope and downstream from the docks. This shall include the selection and identification of physical, chemical, and biological community/indicator components. The biological indicators shall include both pelagic and benthic species but with emphasis on relatively sedentary benthic species (e.g., sculpins). b. The collection of additional baseline data: <ul style="list-style-type: none"> i. in Steensby Inlet on walrus, beluga, bearded seal anadromous Arctic Char abundance, distribution ecology and habitat use; and ii. In Milne Inlet on narwhal, bowhead and anadromous Arctic Char abundance, distribution ecology and habitat use. c. Enhance baseline data on marine wildlife (fish, invertebrates, birds, mammals, etc.) and to provide more details on species abundance and distribution found in the Project area. This shall include, but not be limited to the following: <ul style="list-style-type: none"> iii. Aerial surveys for basking ringed seals throughout the landfast ice of Steensby Inlet and at an appropriate control location; iv. Shore-based observations of pre-Project narwhal and bowhead whale behavior in Milne Inlet that continues at an appropriate frequency throughout the Early Revenue Phase and for not less than three consecutive years. <p>Enhance the baseline for affected freshwater systems, which includes</p> |

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| | control sites to detect Project-related changes before they cause significant harm. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 100 |
| Category: | Marine Environment – Supplemental Baseline Assessments |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction |
| Objective: | To supplement baseline information and improve predictions for potential impacts to marine wildlife. |
| Term or Condition: | The Proponent shall update its Shipping and Marine Wildlife Management Plan, to include avoidance of polynyas and mitigation measures designed for potential fuel spills along the shipping lane during the winter months, with consideration for the impact of spilled fuel on marine mammals when they might be less mobile or able to avoid contact with spilt fuel or fumes. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 101 |
| Category: | Marine Environment – Monitoring |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction and Operations |
| Objective: | To monitor for potential impacts to marine wildlife and marine habitat. |
| Term or Condition: | <p>The Proponent shall incorporate into the appropriate monitoring plans the following items:</p> <ul style="list-style-type: none"> a. A monitoring program that focuses on walrus use of Steensby Inlet and their reaction to disturbance from construction activities, aircraft, and vessels; b. Efforts to involve Inuit in monitoring studies at all levels; c. Monitoring protocols that are responsive to Inuit concerns; d. Marine monitoring protocols are to consider the use of additional detecting devices to ensure adequate monitoring through changing seasonal conditions and daylight; e. Schedule for periodic aerial surveys as recommended by the Marine Environment Working Group; f. Periodic aerial surveys for basking ringed seals throughout the landfast ice of Steensby Inlet, and a suitable control location. Surveys shall be conducted at an appropriate frequency to detect change inter-annual variability; g. Shore-based observations of pre-Project narwhal behavior in Milne Inlet, that continues at an appropriate frequency throughout the Early Revenue Phase (not less than three years); h. Conduct landfast ice monitoring for the duration of the Project Operations phase, which will include: <ul style="list-style-type: none"> i. The number of ship transits that are able to use the same track; and, |

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| | <ul style="list-style-type: none"> ii. The area of landfast ice disrupted annually by ship traffic; and iii. Monitoring strategy focused on assessing and mitigating interaction between humans and wildlife at the port site(s). |
| Reporting Requirements: | To be provided in the Annual Report to the NIRB. |

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| Term and Condition No. | 102 |
| Category: | Marine Environment – Traffic Log and Shipping Information |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To promote public awareness of Project shipping activities for the general public. |
| Term or Condition: | The Proponent shall ensure that routing of project vessels is tracked and recorded for both the southern and northern shipping routes, with data made accessible in real time to communities in Nunavut and Nunavik. |
| Reporting Requirements: | To be provided in the Annual Report to the NIRB. |

***Commentary:** Recognizing that at the time of issuance of Amendment No. 1, the Board was advised that the technology to provide “real time” data is only available at the Port sites, the Proponent is required to provide real time data where technologically feasible and to make best efforts to provide information in as timely a manner as possible where reporting real time data is not yet feasible. As real time data reporting become feasible in areas beyond the Port sites, the Proponent is expected to update its reporting practices to provide real time data in compliance with this Condition.*

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| Term and Condition No. | 103 |
| Category: | Marine Environment – Traffic Log and Shipping Information |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To monitor effectiveness of mitigation of shipping impacts to marine wildlife. |
| Term or Condition: | <p>The Proponent shall report annually to the NIRB regarding project-related ship track and sea ice information, including:</p> <ul style="list-style-type: none"> a. A record of all ship tracks taken along both shipping routes covering the entire shipping season; b. When employing ice-breaking, an overlay of ship tracks onto ice imagery to determine whether ships are effectively avoiding shore leads and polynyas; c. A comparison of recorded ship tracks to the expected nominal shipping route, and probable (if any) extent of year-round shipping during periods of ice cover and open-water; d. An assessment of the level of adherence to the nominal shipping route and the spatial extent of the shipping zone of influence; and e. When employing ice-breaking, marine bird and mammal species and number of individuals attracted to ship tracks in ice. |
| Reporting Requirements: | To be provided in the Annual Report to the NIRB. |

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| Term and Condition No. | 104 |
| Category: | Marine Environment – Traffic Log and Shipping Information |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To prevent impacts to marine wildlife from Project shipping activities. |
| Term or Condition: | <p>Subject to safety considerations and the potential for conditions as determined by the crew of transiting vessels, to result in route deviations,</p> <ul style="list-style-type: none"> a. the Proponent shall require, for shipping to/from Steensby Port, project vessels to maintain a route to the south of Mill Island to prevent disturbance to walrus and walrus habitat on the northern shore of Mill Island. Where project vessels are required to transit to the north of Mill Island owing to environmental or other conditions, an incident report is to be provided to the Marine Environment Working Group and the NIRB within 30 days, noting all wildlife sightings and interactions as recorded by shipboard monitors. b. The Proponent shall summarize all incidences of significant deviations from the nominal shipping routes for traffic to/from Milne Port and Steensby Port as presented in the FEIS and FEIS Addendum to the NIRB annually, with corresponding discussion regarding justification for deviations and any observed environmental impacts. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 105 |
| Category: | Marine Environment – Traffic Log and Shipping Information |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To prevent impacts to marine wildlife from Project shipping activities. |
| Term or Condition: | <p>The Proponent shall ensure that measures to reduce the potential for interaction with marine mammals, particularly in Hudson Strait and Milne Inlet, are identified and implemented prior to commencement of shipping operations. These measures could include, but are not limited to:</p> <ul style="list-style-type: none"> a. Changes in the frequency and timing (including periodic suspensions) of shipping during winter months in Hudson Strait and during the open water season in Milne Inlet, i.e., when interactions with marine mammals are likely to be the most problematic; b. Reduced shipping speeds where ship-marine mammal interactions are most likely; and c. Identification of alternate shipping routes through Hudson Strait for use when conflicts between the proposed routes and marine mammals could arise. Repeated winter aerial survey results showing marine mammal distribution and densities in Hudson Strait would greatly assist in this task. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: Unless otherwise stated, the term “marine mammals” as used throughout the Project Certificate includes polar bears.

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| Term and Condition No. | 106 |
| Category: | Marine Environment – Shipboard Observers |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure that interactions with marine mammals and Project shipping activities are effectively monitored. |
| Term or Condition: | The Proponent shall ensure that shipboard observers are employed during seasons where shipping occurs and provided with the means to effectively carry out assigned duties. The role of shipboard observers in shipping operations should be taken into consideration during the design of any ore carriers purpose-built for the Project, with climate controlled stations and shipboard lighting incorporated to permit visual sightings by shipboard observers during all seasons and conditions. Any shipboard lighting incorporated should be in accordance with the <i>Canada Shipping Act, 2001's Collision Regulations</i> , and should not interfere with safe navigation of the vessel. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 107 |
| Category: | Marine Environment – Shipboard Observers |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To determine the presence of, and ensure that interactions with marine mammals, seabirds and seaducks are effectively monitored for, along the northern and southern shipping routes, as applicable. |
| Term or Condition: | The Proponent shall revise the proposed “surveillance monitoring” to improve the likelihood of detecting strong marine mammal, seabird or seaduck responses occurring too far ahead of the ship to be detectable by observers aboard the ore carriers. A baseline study early in the shipping operations could employ additional surveillance to detect potential changes in distribution patterns and behavior. At an ambitious scope, this might be achieved using unmanned aircraft flown ahead of ships, or over known areas of importance for seabirds or haul-out sites in the case of walrus, in accordance with the requirements of their Special Flight Operations Certificate. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 108 |
| Category: | Marine Environment – Shipboard Observers |

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| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations |
| Objective: | To ensure that interactions with marine mammals, seabirds, and seaducks are effectively monitored for along the southern and northern shipping routes, as applicable. |
| Term or Condition: | The Proponent shall ensure that data produced by the surveillance monitoring program is analysed rigorously by experienced analysts (in addition to being discussed as proposed in the FEIS) to maximize their effectiveness in providing baseline information, and for detecting potential effects of the project on marine mammals, seabirds and seaducks in the Regional Study Area. It is expected that data from the long-term monitoring program be treated with the same rigor. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 109 |
| Category: | Marine Environment – Ship Noise |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To prevent impacts to marine mammals from Project shipping activities. |
| Term or Condition: | The Proponent shall conduct a monitoring program to confirm the predictions in the FEIS with respect to disturbance effects from ships noise on the distribution and occurrence of marine mammals. The survey shall be designed to address effects during the shipping seasons, and include locations in Hudson Strait and Foxe Basin, Milne Inlet, Eclipse Sound and Pond Inlet. The survey shall continue over a sufficiently lengthy period to determine the extent to which habituation occurs for narwhal, beluga, bowhead and walrus. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 110 |
| Category: | Marine Environment – Ship Noise |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction and Operations |
| Objective: | To prevent impacts to marine mammals from Project shipping activities. |
| Term or Condition: | The Proponent shall immediately develop a monitoring protocol that includes, but is not limited to, acoustical monitoring, to facilitate assessment of the potential short term, long term, and cumulative effects of vessel noise on marine mammals and marine mammal populations. The Proponent is expected to work with the Marine Environment Working Group to determine appropriate early warning indicator(s) that will ensure rapid identification of negative impacts along the southern and northern shipping routes. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 111 |
| Category: | Marine Environment – Ship Noise |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction and Operations |
| Objective: | To prevent impacts to marine mammals from Project shipping activities. |
| Term or Condition: | <p>The Proponent shall develop clear thresholds for determining if negative impacts as a result of vessel noise are occurring. Mitigation and adaptive management practices shall be developed to restrict negative impacts as a result of vessel noise. This shall include, but not be limited to:</p> <ul style="list-style-type: none"> a. Identifications of zones where cumulative noise could be mitigated due to biophysical features (e.g., water depth, distance from migration routes, distance from overwintering areas etc.); and b. Vessel transit planning, for all seasons, to determine the degree to which cumulative sound impacts can be mitigated through the seasonal use of different zones. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 112 |
| Category: | Marine Environment – Ship Noise |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction and Operations |
| Objective: | To prevent impacts to marine mammals from Project shipping activities. |
| Term or Condition: | <p>Prior to commercial shipping of iron ore, the Proponent, in conjunction with the Marine Environment Working Group, shall develop a monitoring protocol that includes, but is not limited to, acoustical monitoring that provides an assessment of the negative effects (short and long term cumulative) of vessel noise on marine mammals. Monitoring protocols will need to carefully consider the early warning indicator(s) that will be best examined to ensure rapid identification of negative impacts. Thresholds shall be developed to determine if negative impacts as a result of vessel noise are occurring. Mitigation and adaptive management practices shall be developed to restrict negative impacts as a result of vessel noise. This shall include, but not be limited to:</p> <ul style="list-style-type: none"> a. Identification of zones where noise could be mitigated due to biophysical features (e.g., water depth, distance from migration routes, distance from overwintering areas etc.); b. Vessel transit planning, for all seasons. c. A monitoring and mitigation plan is to be developed, and approved by Fisheries and Oceans Canada prior to the commencement of blasting in marine areas. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 113 |
| Category: | Marine Environment – Arctic Char |
| Responsible Parties: | The Proponent, Marine Environment Working Group |

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| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine fish in Steensby Inlet and Milne Inlet |
| Term or Condition: | The Proponent shall conduct monitoring of marine fish and fish habitat, which includes but is not limited to, monitoring for Arctic Char stock size and health condition in Steensby Inlet and Milne Inlet, as recommended by the Marine Environment Working Group. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 114 |
| Category: | Marine Environment – Arctic Char |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine fish in Steensby Inlet and Milne Inlet. |
| Term or Condition: | In the event of the development of a commercial fishery in the Steensby Inlet area or Milne Inlet-Eclipse Sound areas, the Proponent, in conjunction with the Marine Environment Working Group, shall update its monitoring program for marine fish and fish habitat to ensure that the ability to identify Arctic Char stock(s) potentially affected by Project activities and monitor for changes in stock size and structure of affected stocks and fish health (condition, taste) is maintained to address any additional monitoring issues identified by the MEWG relating to the commercial fishery. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 115 |
| Category: | Marine Environment – Arctic Char |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To prevent impacts to marine fish in Steensby Inlet and Milne Inlet. |
| Term or Condition: | The Proponent is encouraged to continue to explore off-setting options in both the freshwater and marine environment to offset the serious harm to fish which will result from the construction and infrastructure associated with the Project. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: The term “serious harm” is as defined by applicable Federal fisheries legislation and interpreted by Fisheries and Oceans Canada from time to time.

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| Term and Condition No. | |
| Category: | Marine Environment – Blasting |
| Responsible Parties: | The Proponent, Fisheries and Oceans Canada |
| Project Phase: | Construction |
| Objective: | To prevent impacts to marine fish and fish habitat from explosives. |

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| Term or Condition: | Prior to construction, the Proponent shall develop mitigation measures to minimize the effects of blasting on marine fish and fish habitat, marine water quality and wildlife that includes, but is not limited to compliance with the Guidelines for the Use of Explosives In or Near Canadian Fisheries Waters (Wright and Hopky, 1998) as modified by Fisheries and Oceans Canada for use in the North and as revised from time to time. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 117 |
| Category: | Marine Environment – Blasting |
| Responsible Parties: | The Proponent, Fisheries and Oceans Canada |
| Project Phase: | Construction |
| Objective: | To prevent impacts to marine fish and fish habitat from explosives. |
| Term or Condition: | The Proponent shall ensure that blasting in, and near, marine water shall only occur during periods of open water. Blasting in, and near, fish-bearing freshwaters shall, to the greatest degree possible, only occur in open water. If blasting is required during ice-covered periods, it must meet requirements established by Fisheries and Oceans Canada. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 118 |
| Category: | Marine Environment – Blasting |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To prevent impacts to marine fish and fish habitat from explosives. |
| Term or Condition: | The Proponent shall incorporate into the appropriate mitigation plan prior to construction, thresholds for the use of specific mitigation measures meant to prevent or limit marine wildlife disturbance, such as bubble curtains for blasting, and nitrate removal. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: As expressly noted in the Minister's letter of April 28, 2014, this term and condition applies equally to all aspects of the Mary River Project, including the Early Revenue Phase.

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| Term and Condition No. | 119 |
| Category: | Marine Environment – Ringed Seals |
| Responsible Parties: | The Proponent, Marine Environment Working Group |
| Project Phase: | Construction |
| Objective: | To prevent impacts to ringed seals from icebreaking associated with Project shipping. |
| Term or Condition: | The Proponent shall, in conjunction with the Marine Environment Working Group, monitor ringed seal birth lair abundance and distribution for at least two years prior to the start of icebreaking to develop a baseline, with |

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| | continued monitoring over the life of the project as necessary to test the accuracy of the impact predictions and determine if mitigation is needed. Monitoring shall also include a control site outside of the Project's zone of influence. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 120 |
| Category: | Marine Environment – Marine Mammal Interactions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine mammals associated with Project shipping. |
| Term or Condition: | <p>The Proponent shall ensure that, subject to vessel and human safety considerations, all project shipping adhere to the following mitigation procedures while in the vicinity of marine mammals:</p> <ol style="list-style-type: none"> Wildlife will be given right of way; Ships will when possible, maintain a straight course and constant speed, avoiding erratic behavior; and When marine mammals appear to be trapped or disturbed by vessel movements, the vessel will implement appropriate measures to mitigate disturbance, including stoppage of movement until wildlife have moved away from the immediate area. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

Commentary: As noted previously, unless otherwise stated, the term “marine mammals” as used throughout the Project Certificate includes polar bears.

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| Term and Condition No. | 121 |
| Category: | Marine Environment – Marine Mammal Interactions |
| Responsible Parties: | The Proponent, Fisheries and Oceans Canada, Environment Canada |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine mammals and seabird colonies associated with Project shipping. |
| Term or Condition: | <p>The Proponent shall immediately report any accidental contact by project vessels with marine mammals or seabird colonies to Fisheries and Oceans Canada and Environment Canada respectively, by notifying the appropriate regional office of the:</p> <ol style="list-style-type: none"> Date, time and location of the incident; Species of marine mammal or seabird involved; Circumstances of the incident; Weather and sea conditions at the time; Observed state of the marine mammal or sea bird colony after the incident; and, Direction of travel of the marine mammal after the incident, to the extent that it can be determined. |

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| Reporting Requirements: | To be developed following approval of the Project by the Minister. |
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| Term and Condition No. | 122 |
| Category: | Marine Environment – Marine Mammal Interactions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine mammals and seabird colonies associated with Project shipping. |
| Term or Condition: | The Proponent shall summarize and report annually to the NIRB regarding accidental contact by project vessels with marine mammals or seabird colonies through the applicable monitoring report. |
| Reporting Requirements: | To be provided in the Annual Report to the NIRB. |

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| Term and Condition No. | 123 |
| Category: | Marine Environment – Marine Mammal Interactions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine mammals and seabird colonies associated with Project shipping. |
| Term or Condition: | The Proponent shall provide sufficient marine mammal observer coverage on project vessels to ensure that collisions with marine mammals and seabird colonies are observed and reported through the life of the Project. The marine wildlife observer protocol shall include, but not be limited to, protocols for marine mammals, seabirds, and environmental conditions and immediate reporting of significant observations to the ship masters of other vessels along the shipping route, as part of the adaptive management program to address any items that require immediate action. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 124 |
| Category: | Marine Environment – Marine Mammal Interactions |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To prevent impacts to marine mammals and marine fish populations from increased harvesting pressures in Project areas. |
| Term or Condition: | The Proponent shall prohibit project employees from recreational boating, fishing, and harvesting of marine wildlife in project areas, including Steensby Inlet and Milne Inlet. The Proponent is not directed to interfere with harvesting by the public in or near project areas, however, enforcement of a general prohibition on harvesting in project areas by project employees during periods of active employment (i.e. while on site and between work shifts) is required. |

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| Reporting Requirements: | To be developed following approval of the Project by the Minister. |
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| Term and Condition No. | 125 |
| Category: | Marine Environment – Public Engagement |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To assess acceptability of acoustic deterrent devices for the general public. |
| Term or Condition: | Prior to use of acoustic deterrent devices, the Proponent shall carry out consultations with communities along the shipping routes and nearest to Steensby Inlet and Milne Inlet ports to assess the acceptability of these devices. Feedback received from community consultations shall be incorporated into the appropriate mitigation plan. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 125 (a) |
| Category: | Marine Environment – Public Engagement |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure public acceptability of project vessel anchor sites and reduce potential conflicts between project marine shipping and local harvesting. |
| Term or Condition: | The Proponent shall consult with potentially-affected communities and groups, particularly Hunters' and Trappers' Organizations regarding the identification of project vessel anchor sites and potential areas of temporary refuge for project vessels along the shipping routes within the Nunavut Settlement Area. Feedback received from community consultations shall be incorporated into the most appropriate mitigation or management plans. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 126 |
| Category: | Marine Environment – Public Engagement |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To incorporate local input into monitoring data collection. |
| Term or Condition: | The Proponent shall design monitoring programs to ensure that local users of the marine area in communities along the shipping route have opportunity to be engaged throughout the life of the Project in assisting with monitoring and evaluating potential project-induced impacts and changes in marine mammal distributions. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 127 |
| Category: | Marine Environment – Public Engagement |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To promote public awareness and engagement with Project shipping activities. |
| Term or Condition: | The Proponent shall ensure that communities and groups in Nunavik are kept informed of project shipping activities and are provided with opportunity to participate in the continued development and refinement of shipping related monitoring and mitigation plans. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 128 |
| Category: | Marine Environment – Public Engagement |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure habitat compensation is acceptable to local communities. |
| Term or Condition: | The Proponent shall consult with local communities as fish habitat off-setting options are being considered and demonstrate its incorporation of input received into the design of the Fish Habitat Off-Setting Plan required to offset the Harmful Alteration, Disruption or Destruction of Fish and Fish Habitat (HADD). |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

4.3 Socio-Economic Terms and Conditions

Population Demographics

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| Term and Condition No. | 129 |
| Category: | Population Demographics – Qikiqtaaluk Socio-Economic Monitoring Committee |
| Responsible Parties: | The Proponent, members of the QSEMC |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | Description of the general monitoring framework to be developed in consultation with the Qikiqtaaluk Socio-Economic Monitoring Committee. |
| Term or Condition: | The Proponent is strongly encouraged to engage in the work of the Qikiqtaaluk Socio-Economic Monitoring Committee along with other agencies and affected communities, and it should endeavour to identify areas of mutual interest and priorities for inclusion into a collaborative monitoring framework that includes socio-economic priorities related to the Project, communities, and the North Baffin region as a whole. |

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| Reporting Requirements: | To be determined following approval of the Project by the Minister |
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| Term and Condition No. | 130 |
| Category: | Population Demographics – Project-specific monitoring |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | Recognizing that some Project-specific socio-economic monitoring initiatives may be best addressed in smaller more focused working groups, this is encouraged where possible. |
| Term or Condition: | The Proponent should consider establishing and coordinating with smaller socio-economic working groups to meet Project specific monitoring requirements throughout the life of the Project. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

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| Term and Condition No. | 131 |
| Category: | Population Demographics – Monitoring demographic changes |
| Responsible Parties: | The Proponent, members of the QSEMC |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To monitor demographic changes affecting the North Baffin communities and the territory as a whole in order to understand changes and to evaluate the Proponent's predictions as related to population demographics. |
| Term or Condition: | The Qikiqtaaluk Socio-Economic Monitoring Committee is encouraged to engage in the monitoring of demographic changes including the movement of people into and out of the North Baffin communities and the territory as a whole. This information may be used in conjunction with monitoring data obtained by the Proponent from recent hires and/or out-going employees in order to assess the potential effect the Project has on migration. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

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| Term and Condition No. | 132 |
| Category: | Population Demographics – Training programs |
| Responsible Parties: | The Proponent, North Baffin Hamlets, Municipal Training Organization, Government of Nunavut |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To develop training programs in ways which contribute to limiting the potential for migration to occur as North Baffin residents seek training and employment opportunities in the larger centre of Iqaluit. |
| Term or Condition: | The Proponent is encouraged to partner with other agencies such as Hamlet organizations in the North Baffin region, the Municipal Training Organization, and the Government of Nunavut in order to adapt pre-existing, or to develop new programs which encourage Inuit to continue living in their home communities while seeking ongoing and progressive |

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| | training and development. Programs may include driver training programs offered within Hamlets, providing upgraded equipment to communities for use in municipal works, providing incentives for small businesses to remain operating out of their community of origin, or supplementing existing recreational facilities and programming in North Baffin communities. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 133 |
| Category: | Population Demographics – Monitoring demographic changes |
| Responsible Parties: | The Proponent, members of QSEMC, Government of Nunavut, Nunavut Housing Corporation |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | Training programs may be developed with the goal of limiting the potential for migration to occur as North Baffin residents may choose to seek employment and therefore move from smaller North Baffin communities to the larger centre of Iqaluit. |
| Term or Condition: | The Proponent is encouraged to work with the Qikiqtaaluk Socio-Economic Monitoring Committee and in collaboration with the Government of Nunavut's Department of Health and Social Services, the Nunavut Housing Corporation and other relevant stakeholders, design and implement a voluntary survey to be completed by its employees on an annual basis in order to identify changes of address, housing status (i.e. public/social, privately owned/rented, government, etc.), and migration intentions while respecting confidentiality of all persons involved. The survey should be designed in collaboration with the Government of Nunavut's Department of Health and Social Services, the Nunavut Housing Corporation and other relevant stakeholders. Non-confidential results of the survey are to be reported to the Government of Nunavut and the NIRB. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

Commentary: Although the survey design and implementation should be undertaken in consultation with the Government of Nunavut, the responsibility for design and implementation of the survey remains with the Proponent.

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| Term and Condition No. | 134 |
| Category: | Population Demographics – Employee origin |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | Project-specific information regarding employee origin is important to comparing predictions of labour availability and employment opportunities with actual levels of employment from various demographic segments over different geographic areas. |
| Term or Condition: | The Proponent shall include with its annual reporting to the NIRB a summation of employee origin information as follows: |

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| | <ul style="list-style-type: none"> a. The number of Inuit and non-Inuit employees hired from each of the North Baffin communities, specifying the number from each; b. The number of Inuit and non-Inuit employees hired from each of the Kitikmeot and Kivalliq regions, specifying the number from each; c. The number of Inuit and non-Inuit employees hired from a southern location or other province/territory outside of Nunavut, specifying the locations and the number from each; and d. The number of non-Canadian foreign employees hired, specifying the locations and number from each foreign point of hire. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

Education and Training

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| Term and Condition No. | 135 |
| Category: | Education and Training – Employee work/study programs |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association |
| Project Phase: | Construction and Operations |
| Objective: | Recognizing the 12-hour work days inherent with work at the Project site, it is not clear how employees would successfully engage in a work/study program offered by the Proponent. |
| Term or Condition: | The Proponent is encouraged to consider offering additional options for work/study programs available to Project employees (in addition to study programs at project sites that would be offered to employees when off shift). |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 136 |
| Category: | Education and Training – Transferable skills and training |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association, Government of Nunavut, Municipal Training Organization |
| Project Phase: | Construction and Operations |
| Objective: | Offering training which results in certifications that are valid for employment at more than one site or in different fields provides an investment in the long-term employability of Nunavummiut. |
| Term or Condition: | The Proponent is encouraged to work with training organizations and/or government departments offering mine-related or other training in order to provide additional opportunities for employees to gain meaningful and transferable skills, credentials and certifications especially where such training of employees offered by the Proponent remains valid only at the Mary River Project sites. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 137 |
| Category: | Education and Training – Transferable skills and training |
| Responsible Parties: | The Proponent |

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| Project Phase: | Construction |
| Objective: | Offering training which results in certifications that are valid for employment at more than one site or in different fields provides an investment in the long-term employability of Nunavummiut. |
| Term or Condition: | Prior to construction, the Proponent shall develop an easily referenced listing of formal certificates and licences that may be acquired via on-site training or training during employment at Mary River, such listing to indicate which of these certifications and licences would be transferable to a similar job site within Nunavut. This listing should be updated on an annual basis, and is to be provided to the NIRB upon completion and whenever it is revised. |
| Reporting Requirements: | The initial listing should be provided to the NIRB at least 60 days prior to the start of construction, an annually thereafter or as may otherwise be required. |

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| Term and Condition No. | 138 |
| Category: | Education and Training – Inuit employee training |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association |
| Project Phase: | Construction |
| Objective: | Working together with the Qikiqtani Inuit Association to prepare effective training programs developed specifically for Inuit will assist in employee preparedness and may improve employee retention. |
| Term or Condition: | The Proponent is encouraged to work with the Qikiqtani Inuit Association to ensure the timely development of effective Inuit training and work-ready programs. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 139 |
| Category: | Education and Training – Hiring southern Canadians and foreign employees |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | With the unknown availability of labour from the North Baffin region and Nunavut as a whole to provide employment to the Project, the need to employ southern Canadians or foreign workers may implicate the Proponent's on-site language, cross-cultural awareness, and other programming. Having information available regarding the sourcing of labour for the Project is important to ensuring the Proponent and others are prepared for any influx of southern or foreign employees. |
| Term or Condition: | Prior to commencing construction, the Proponent is requested to undertake and provide the results of a detailed labour market analysis which provides quantitative predictions of the number of employees that may reasonably need to be sourced from southern Canada and from foreign markets, identifying where applicable, the country of origin for the foreign labour. Within 90 days of the issuance of the Project Certificate, the Proponent is required to submit an updated Labour Market Analysis which considers |

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| | requirements of the ERP as well as hiring points within Nunavut and outside of the North Baffin region and RSA. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Commentary: As expressly noted in the Minister's letter of April 28, 2014, this term and condition applies equally to all aspects of the Mary River Project, including the Early Revenue Phase.

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| Term and Condition No. | 140 |
| Category: | Education and Training – Survey of Nunavummiut employees |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | Monitoring the number of employees who leave previous employment in their home communities or who leave some type of formal education in pursuit of employment with the Project is important to evaluate predictions made and the potential impacts to North Baffin communities and education rates. |
| Term or Condition: | The Proponent is encouraged to survey Nunavummiut employees as they are hired and specifically note the level of education obtained and whether the incoming employee resigned from a previous job placement or educational institution in order to take up employment with the Project. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 141 |
| Category: | Education and Training – Training of Inuit |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To ensure that effective training is available in a timely manner. |
| Term or Condition: | The Proponent is encouraged to work with the Qikiqtani Inuit Association prior to construction in order to prioritize the provision of training of Inuit to serve as employees in monitoring or other such capacities. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Livelihood and Employment

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| Term and Condition No. | 142 |
| Category: | Livelihood and Employment – Employee cohesion |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To promote cohesion between employees on site, and between employees and their families. |
| Term or Condition: | The Proponent is encouraged to address the potential direct and indirect effects that may result from Project employees' on-site use of various Inuktitut dialects as well as other spoken languages, specifically paying |

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| | attention to the potential alienation of some employees that may occur as a result of language or other cultural barriers. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 143 |
| Category: | Livelihood and Employment – Employee family contact |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To enable and foster connection and contact between employees and family members. |
| Term or Condition: | The Proponent is encouraged to consider the use of both existing and innovative technologies (e.g. community radio station call-in shows, cell phones, video-conferencing, Skype, etc.) as a way to ensure Project employees are able to keep in contact with family and friends and to ward off the potential for feelings of homesickness and distance to impact on employee retention and family stability. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 144 |
| Category: | Livelihood and Employment – Requirements for employment |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To ensure that the prerequisites and requirements for employment are clear and well known in work readiness programs. |
| Term or Condition: | The Proponent is encouraged to make requirements for employment clear in its work-readiness and other public information programs and documentation, including but not limited to: education levels, criminal records checks, policies relating to drug and alcohol use and testing, and language abilities. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 145 |
| Category: | Livelihood and Employment – Barriers to employment for women |
| Responsible Parties: | The Proponent, Government of Nunavut, members of QSEMC |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To monitor and understand the existence of barriers to employment for women specifically relating to childcare availability and costs. |
| Term or Condition: | The Proponent is encouraged to work with the Government of Nunavut and the Qikiqtaaluk Socio-Economic Monitoring Committee to monitor the barriers to employment for women, specifically with respect to childcare availability and costs. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 146 |
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| Category: | Livelihood and Employment – Availability of childcare for Project employees |
| Responsible Parties: | Government of Nunavut and Qikitani Inuit Association |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To lessen the barriers to employment as relating to the availability of childcare. |
| Term or Condition: | The Government of Nunavut and the Qikiqtani Inuit Association are strongly encouraged to investigate the possibility for Project revenue streams to support initiatives or programs which offset or subsidize childcare for Project employees. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 147 |
| Category: | Livelihood and Employment – Affordability of housing |
| Responsible Parties: | The Proponent, Government of Nunavut and Nunvut Housing Corporation |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To lessen the barriers to maintaining employment as relating to the availability and costs of housing. |
| Term or Condition: | The Proponent is encouraged to work with the Government of Nunavut and the Nunavut Housing Corporation to investigate options and incentives which might enable and provide incentive for employees living in social housing to maintain employment as well as to negotiate for and obtain manageable rental rates. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Economic Development and Self-Reliance, and Contracting and Business Opportunities

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| Term and Condition No. | 148 |
| Category: | Economic Development and Self-Reliance, and Contracting and Business Opportunities – Food security |
| Responsible Parties: | The Proponent, Members of the QSEMC |
| Project Phase: | Construction and Operations |
| Objective: | To improve understanding of the interactions between the Project and Inuit harvesting and how this relates to food security for residents of the North Baffin. |
| Term or Condition: | The Proponent is encouraged to undertake collaborative monitoring in conjunction with the Qikiqtaaluk Socio-Economic Monitoring Committee's monitoring program which addresses Project harvesting interactions and food security and which includes broad indicators of dietary habits. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

***Commentary:** If available, the Proponent should also incorporate information regarding harvesting and food security indicators generated under the auspices of the Nunavut General Monitoring Plan.*

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| Term and Condition No. | 149 |
| Category: | Economic Development and Self-Reliance, and Contracting and Business Opportunities – Impacts of temporary closure |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To further the understanding of how a temporary closure may impact on the well-being of the residents and businesses of the North Baffin region. |
| Term or Condition: | Prior to the commencement of operations, the Proponent is required to undertake an analysis of the risk of temporary mine closure, giving consideration to how communities in the North Baffin region may be affected by temporary and permanent closure of the mine, including economic, social and cultural effects and taking into consideration the potential drop in employment between the construction and operations phases of the Project. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 150 |
| Category: | Economic Development and Self-Reliance, and Contracting and Business Opportunities – Impacts to visitors of Sirmilik National Park |
| Responsible Parties: | The Proponent, Parks Canada |
| Project Phase: | Construction and Operations |
| Objective: | To limit potential of Project impacts upon visitors, researchers and/or beneficiary users of the Sirmilik National Park. |
| Term or Condition: | <p>The Proponent will ensure the following:</p> <ul style="list-style-type: none"> a. The Proponent will maintain, where possible, a minimum flying altitude of 2,000 feet over the park, except for approaches to land, take-off or for safety reasons. b. The Proponent will ensure that certification of noise compliance is current, where compliance is applicable. c. For the purpose of briefing Park visitors, the Proponent will provide Parks Canada (1) prior to commencing the shipping season, with planned daily shipping schedules, and (2) annually, with air traffic information, and (3) to provide updates when significant variations from these are expected. d. The Proponent is strongly encouraged to provide due consideration to wilderness experience during its operations in the open water season, especially during the month of August which is typically a time of high use by sea kayakers. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister. |

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| Term and Condition No. | 151 |
| Category: | Economic Development and Self-Reliance, and Contracting and Business |

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| | Opportunities – Access to housing |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction and Operations |
| Objective: | To investigate ways that economic development and self-reliance may improve access to housing by employees. |
| Term or Condition: | The Proponent is encouraged to investigate measures and programs designed to assist Project employees with homeownership or access to affordable housing options. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 152 |
| Category: | Economic Development and Self-Reliance, and Contracting and Business Opportunities – IIBA contract requirements |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To improve ability of small businesses to access Project contract and sub-contract opportunities. |
| Term or Condition: | The Qikiqtani Inuit Association is encouraged to provide the Board and the Qikiqtaaluk Socio-Economic Monitoring Committee with information regarding the effectiveness of any provisions within the Inuit Impact and Benefit Agreement which may require that larger contracts be broken down into smaller size in order that they are reasonably managed by smaller businesses in the North Baffin region, while respecting any confidential or privileged information. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Human Health and Well-Being

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| Term and Condition No. | 153 |
| Category: | Human Health and Well-Being – Employee and family health and well-being |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Closure and Post-Closure Monitoring |
| Objective: | To provide adequate medical services on site, including those that contribute to the mental health and well-being of all employees. |
| Term or Condition: | The Proponent is encouraged to employ a mental health professional to provide counselling to Inuit and non-Inuit employees in order to positively contribute toward employee health and well-being. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 154 |
| Category: | Human Health and Well-being – Indirect impacts to health and well-being |
| Responsible Parties: | The Proponent, Government of Nunavut, members of the QSEMC |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |

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| Objective: | To understand the indirect impacts of the Project upon health and well-being. |
| Term or Condition: | The Proponent shall work with the Government of Nunavut and the Qikiqtaaluk Socio-Economic Monitoring Committee to monitor potential indirect effects of the Project, including indicators such as the prevalence of substance abuse, gambling issues, family violence, marital problems, rates of sexually transmitted infections and other communicable diseases, rates of teenage pregnancy, high school completion rates, and others as deemed appropriate. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 155 |
| Category: | Human Health and Well-being – Employee cohesion |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To encourage the on-site cohesion of employees through cultural-awareness and social programs. |
| Term or Condition: | The Proponent is strongly encouraged to provide the NIRB with an updated report on its development of mitigation measures and plans to deal with potential cultural conflicts which may occur at site as these may become needed. |
| Reporting Requirements: | To be provided at least 60 days prior to the commencement of any construction activities. |

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| Term and Condition No. | 156 |
| Category: | Human Health and Well-Being – Support initiatives |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To assist with fostering well-being within point-of-hire communities. |
| Term or Condition: | The Proponent is encouraged to assist with the provision and/or support of recreation programs and opportunities within the potentially affected communities in order to mitigate potential impacts of employees' absences from home and community life. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 157 |
| Category: | Human Health and Well-Being – Counseling and treatment programs |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To make available, necessary treatment and counseling services for employee and family well-being. |
| Term or Condition: | The Proponent should consider providing counseling and access to treatment programs for substance and gambling addictions as well as which |

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| | address domestic, parenting, and marital issues that affect employees and/or their families. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Community Infrastructure and Public Services

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| Term and Condition No. | 158 |
| Category: | Community Infrastructure and Public Services – Impacts to health services |
| Responsible Parties: | The Proponent, Government of Nunavut |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To monitor indirect Project impacts to health and social services provided by the Government of Nunavut. |
| Term or Condition: | The Proponent is encouraged to work with the Government of Nunavut and other parties as deemed relevant in order to develop a Human Health Working Group which addresses and establishes monitoring functions relating to pressures upon existing services and costs to the health and social services provided by the Government of Nunavut as such may be impacted by Project-related in-migration of employees, to both the North Baffin region in general, and to the City of Iqaluit in particular. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 159 |
| Category: | Community Infrastructure and Public Services – Impacts to infrastructure |
| Responsible Parties: | The Proponent, Government of Nunavut |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To monitor Project-related impacts to infrastructure within the Local Study Area communities. |
| Term or Condition: | The Proponent is encouraged to work with the Government of Nunavut to develop an effects monitoring program that captures increased Project-related pressures to community infrastructure in the Local Study Area communities, and to airport infrastructure in all point-of-hire communities and in Iqaluit. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 160 |
| Category: | Community Infrastructure and Public Services – Distribution of benefits |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association, Government of Nunavut |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure the distribution of benefits is done in a way that off-sets Project-related impacts to infrastructure or services. |
| Term or Condition: | The Government of Nunavut and the Qikiqtani Inuit Association are encouraged to cooperate to ensure in a broad sense, that Project benefits |

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| | are distributed across impacted communities and across various demographic groups within these communities in a manner that best offsets any Project-related impacts to infrastructure or services. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 161 |
| Category: | Community Infrastructure and Public Services – Policing |
| Responsible Parties: | The Proponent, Government of Nunavut, Royal Canadian Mounted Police |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure the territorial government and its policing service are adequately prepared to handle any Project-related increases to the need for service and associated impacts. |
| Term or Condition: | The Government of Nunavut should be prepared for any potential increased need for policing, and ensure that the Royal Canadian Mounted Police is prepared to handle ongoing Project-related demographic changes and subsequent crime prevention that may be needed as a result of the development, operation, and closure of the Project. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Culture, Resources and Land Use

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| Term and Condition No. | 162 |
| Category: | Culture, Resources and Land Use – Public consultation |
| Responsible Parties: | The Proponent, Elders and community members of the North Baffin communities |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure the ongoing and consistent involvement of Elders and community members in developing and revising monitoring and mitigation plans. |
| Term or Condition: | The Proponent should make all reasonable efforts to engage Elders and community members of the North Baffin communities in order to have community level input into its monitoring programs and mitigative measures, to ensure that these programs and measures have been informed by traditional activities, cultural resources, and land use as such may be implicated or impacted by ongoing Project activities. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 163 |
| Category: | Culture, Resources and Land Use – Public consultation |
| Responsible Parties: | The Proponent, North Baffin communities |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To involve communities in the development and evolution of management and monitoring plans. |

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| Term or Condition: | The Proponent shall continue to engage and consult with the communities of the North Baffin region in order to ensure that Nunavummiut are kept informed about the Project activities, and more importantly, in order that the Proponent's management and monitoring plans continue to evolve in an informed manner. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. 164 | 164 |
| Category: | Socio-Economic Impacts – Shipping notification |
| Responsible Parties: | The Proponent, Elders and community members of the North Baffin communities |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | In order to inform members of North Baffin communities of planned Project shipping transits such that community members' planned travel routing may be adjusted to avoid interaction with Project ships and/or ship tracks. |
| Term or Condition: | The Proponent is required to provide notification to communities regarding scheduled ship transits throughout the regional study area including Eclipse Sound and Milne Inlet, real-time data regarding ships in transit and any changes to the proposed shipping schedule to the MEWG and agencies within Pond Inlet on a weekly basis during open water shipping, and to the RSA communities on a monthly basis. |
| Reporting Requirements: | The information required shall be provided on a monthly basis at a minimum or more often as the Proponent determines necessary and is to be provided to the Proponent's community liaison officers and those of the Qikiqtani Inuit Association as well as the Hunters and Trappers Organizations and Hamlet organizations of the North Baffin communities, Coral Harbour, and the NIRB's Monitoring Officer. Where deviations from the proposed schedule or routing are required, this information shall be provided as soon as possible. |

Commentary: Recognizing that at the time of issuance of Amendment No. 1, the Board was advised that the technology to provide "real time" data is only available at the Port sites, the Proponent is required to provide real time data where technologically feasible and to make best efforts to provide information in as timely a manner as possible where reporting real time data is not yet feasible. As real time data reporting become feasible in areas beyond the Port sites, the Proponent is expected to update its reporting practices to provide real time data in compliance with this Condition.

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| Term and Condition No. 165 | 165 |
| Category: | Socio-Economic Impacts – Emergency shelters |
| Responsible Parties: | The Proponent, Elders and community members of the North Baffin communities |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |

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| Objective: | In order to provide for human safety precautions in the event of adverse weather or other emergency situations along segments of linear transportation infrastructure. |
| Term or Condition: | The Proponent is strongly encouraged to provide buildings along the rail line and Milne Inlet Tote Road for emergency shelter purposes, and shall make these available for all employees and any land users travelling through the Project area. In the event that these buildings cannot, for safety or other reasons be open to the public, the Proponent is encouraged to set up another form of emergency shelters (e.g. seacans outfitted for survival purposes) every 1 kilometre along the rail line and Milne Inlet Tote Road. These shelters must be placed along Tote Road and rail routing prior to operation of either piece of infrastructure, and must be maintained for the duration of project activities, including the closure phase. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 166 |
| Category: | Socio-Economic Impacts – Public Consultation |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To ensure members of the public are able to access shipping information on an as-required basis in order to inform potential users of the scheduled Project activities which could require deviations to land users' schedules or routing. |
| Term or Condition: | The Proponent should ensure through its consultation efforts and public awareness campaigns that the public have access to shipping operations personnel for transits into and out of both Steensby Inlet port and Milne Inlet port either via telephone or internet contact, in order that any questions regarding ice conditions or ship movements that could assist ice users in preparing for travel may be answered by Project staff in a timely fashion. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Benefits, Royalty, and Taxation

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| Term and Condition No. | 167 |
| Category: | Benefits, Royalty and Taxation – Partnership Agreements |
| Responsible Parties: | The Proponent, Government of Nunavut |
| Project Phase: | Construction |
| Objective: | The Proponent and the Government of Nunavut develop a formalized partnership agreement. |
| Term or Condition: | The Proponent and the Government of Nunavut are strongly encouraged to, as soon as practical following the issuance of the Project Certificate, enter into discussions to negotiate a Development Partnership Agreement. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Governance and Leadership

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| Term and Condition No. | 168 |
| Category: | Governance and Leadership – Monitoring program |
| Responsible Parties: | The Proponent, members of the QSEMC |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | Outline variables that are relevant to the Project and which should be adopted by the QSEMC's monitoring program. |
| Term or Condition: | The specific socioeconomic variables as set out in Section 8 of the Board's Report, including data regarding population movement into and out of the North Baffin Communities and Nunavut as a whole, barriers to employment for women, project harvesting interactions and food security, and indirect Project effects such as substance abuse, gambling, rates of domestic violence, and education rates that are relevant to the Project, be included in the monitoring program adopted by the Qikiqtani Socio-Economic Monitoring Committee. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Commentary: As noted previously, if available, the Proponent should also incorporate information regarding the specific variables in Section 8 of the Board's Final Hearing Report that may be monitored under the auspices of the Nunavut General Monitoring Plan.

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| Term and Condition No. | 169 |
| Category: | Governance and Leadership – Monitoring economic effects |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Temporary Closure / Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To maintain transparency inform communities in relation to economic benefits associated with the Project. |
| Term or Condition: | The Proponent provide an annual monitoring summary to the NIRB on the monitoring data related to the regional and cumulative economic effects (positive and negative) associated with the Project and any proposed mitigation measures being considered necessary to mitigate the negative effects identified. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

Other Terms and Conditions

Accidents and Malfunctions

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| Term and Condition No. | 170 |
| Category: | Accidents and Malfunctions – Terrestrial Wildlife Management and Monitoring Plan |

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| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | Updates to plan in order to better understand the potential for, and to minimize possible caribou-railway interactions. |
| Term or Condition: | The Proponent shall include in an updated Terrestrial Wildlife Management and Monitoring Plan, plans for increased caribou monitoring efforts including weekly winter track surveying and summer and fall surveys undertaken on foot twice per month. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 171 |
| Category: | Accidents and Malfunctions – Terrestrial Wildlife Management and Monitoring Plan |
| Responsible Parties: | The Proponent |
| Project Phase: | Pre-Construction |
| Objective: | Updates to plan in order to minimize potential for caribou-railway interactions. |
| Term or Condition: | The Proponent shall include within its updated Terrestrial Wildlife Management and Monitoring Plan, a commitment to establish deterrents along the railway and Tote Road embankments at any areas where it is determined that caribou are utilizing the embankments or transportation corridors to facilitate movement and where such movement presents a likelihood of caribou mortality to occur. |
| Reporting Requirements: | To be developed following approval of the Project by the Minister |

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| Term and Condition No. | 172 |
| Category: | Accidents and Malfunctions – Overwintered fuel vessel |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction |
| Objective: | To provide evidence that vessel to be used is fit and insured for proposed use. |
| Term or Condition: | The Proponent is encouraged to provide the Government of Nunavut with evidence that the vessel that it intends to use for the overwintering of fuel has been designed and certified for use under the conditions which it is expected to operate, and that it be required to provide copies of the vessel owners' insurance policies. |
| Reporting Requirements: | The required information is to be provided to the Government of Nunavut as soon as possible, and at a minimum, at least 60 days prior to the commencement of any construction related shipping. |

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| Term and Condition No. | 173 |
| Category: | Accidents and Malfunctions – Use of best practices |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Closure |

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| Objective: | To provide additional spill contingency measures for spills in marine areas. |
| Term or Condition: | The Proponent shall employ best practices and meet all regulatory requirements during all ship-to-shore and other marine-based fuel transfer events. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

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| Term and Condition No. | 174 |
| Category: | Accidents and Malfunctions – Community level spill response |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Closure |
| Objective: | To improve community ability to assist in spill response. |
| Term or Condition: | The Proponent and the Canadian Coast Guard are required to provide spill response equipment and annual training to Nunavut communities along the shipping route to potentially improve response times in the event of a spill. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

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| Term and Condition No. | 175 |
| Category: | Accidents and Malfunctions – Ship track markers in ice cover |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association, Hunters and Trappers Organizations of the North Baffin region and Coral Harbour |
| Project Phase: | Construction, Operations, Closure and Post-Closure Monitoring |
| Objective: | To ensure that measures taken to mark the shipping track(s) during periods of ice cover are effective in advising ice-based travelers, and that, where necessary, revisions to this practice can be made to ensure public safety. |
| Term or Condition: | The Proponent shall, in coordination and consultation with the Qikiqtani Inuit Association and the Hunters and Trappers Organizations of the North Baffin communities and Coral Harbour, provide updates to its Shipping and Marine Mammals Management Plan to include adaptive management measures it proposes to take should the placement of reflective markers along the ship track in winter months not prove to be a feasible method of marking the track to ensure the safety of ice-based travelers. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

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| Term and Condition No. | 176 |
| Category: | Accidents and Malfunctions – Revised spill modeling |
| Responsible Parties: | The Proponent |
| Project Phase: | Pre-Construction, Construction Operations, Closure |
| Objective: | To improve community ability to assist in spill response. |
| Term or Condition: | The Proponent is required to revise its spill planning to include additional trajectory modeling for areas of Hudson Strait, such as Mill Island, where walrus concentrate, as well as for mid-Hudson Strait during winter conditions as well as for the northern shipping route, including Milne Inlet, Eclipse Sound and Pond Inlet. |

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| Reporting Requirements: | The updated modeling shall be provided to the NIRB, Fisheries and Oceans Canada, and Environment Canada for review at least 3 months prior shipment of bulk fuel to Steensby Inlet or Milne Inlet. |
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| Term and Condition No. | 177 |
| Category: | Accidents and Malfunctions – Foreign flagged vessels |
| Responsible Parties: | The Proponent |
| Project Phase: | Construction, Operations, Closure and Post-Closure Monitoring |
| Objective: | To ensure foreign flagged ships operating in Canadian waters are held to the same standard as domestic ships with regard to emergency response planning. |
| Term or Condition: | The Proponent shall enroll any foreign flagged vessels commissioned for Project-related shipping within Canadian waters into the relevant foreign program equivalent to Transport Canada's Marine Safety Delegated Statutory Inspection Program. |
| Reporting Requirements: | To be determined following approval of the Project by the Minister |

***Commentary:** As expressly noted in the Minister's letter of April 28, 2014, this term and condition applies equally to all aspects of the Mary River Project, including the Early Revenue Phase.*

Alternatives Analysis

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| Term and Condition No. | 178 |
| Category: | Alternatives Analysis – Mill Island shipping route consideration |
| Responsible Parties: | The Proponent, Qikiqtani Inuit Association, Nunavut Impact Review Board, Marine Environment Working Group |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance |
| Objective: | To prevent disturbance to walrus and walrus habitat on the northern shore of Mill Island. |
| Term or Condition: | Subject to safety considerations and the potential for conditions, as determined by the crew of transiting vessels, to result in route deviations, the Proponent shall require project vessels to maintain a route to the south of Mill Island to prevent disturbance to walrus and walrus habitat on the northern shore of Mill Island. |
| Reporting Requirements: | Where project vessels are required to transit to the north of Mill Island owing to environmental or other conditions, an incident report is to be provided to the Marine Environment Working Group and the NIRB within 30 days, noting all wildlife sightings and interactions as recorded by shipboard monitors. The Proponent shall summarize all incidences of deviations from the nominal shipping route as presented in the FEIS to the NIRB annually, with corresponding discussion regarding justification for deviations and any observed environmental impacts. |

Operational Variability

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| Term and Condition No. | 179 |
| Category: | Operational Variability |
| Responsible Parties: | The Proponent |
| Project Phase: | Operations |
| Objective: | To apply the precautionary principle in respect of potential effects on marine wildlife and marine habitat from changes to shipping frequency that may result from a significant increase in mine production for an extended period of time. |
| Term or Condition: | Baffinland shall not exceed 20 ore carrier transits to Steensby Port per month during the open water season and 242 transits per year in total. |
| Reporting Requirements: | To be developed following approval by the Minister |

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| Term and Condition No. | 179 (a) |
| Category: | Operational Variability/Flexibility |
| Responsible Parties: | The Proponent |
| Project Phase: | Operations |
| Objective: | To ensure that there are appropriate limits on the Early Revenue Phase Proposal marine shipping component in order to limit and manage likely project effects, while balancing the need for operational flexibility. |
| Term or Condition: | In any given calendar year, the total volume of ore shipped via Milne Inlet, shall not exceed 4.2 million tonnes. |
| Reporting Requirements: | For each year after the Proponent commences shipping ore via Milne Inlet under the Early Revenue Phase Proposal, the Proponent shall include in the Annual Report to the NIRB, a summary of the total amount of ore shipped via Milne Inlet for the previous calendar year. |

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| Term and Condition No. | 179 (b) |
| Category: | Operational Variability/Flexibility |
| Responsible Parties: | The Proponent |
| Project Phase: | Operations |
| Objective: | To ensure that there are appropriate limits on the Early Revenue Phase Proposal project land transportation component in order to limit and manage likely project effects, while balancing the need for operational flexibility. |
| Term or Condition: | In any given calendar year, the total volume of ore transported by truck on the Milne Inlet Tote Road shall not exceed 4.2 million tonnes. |
| Reporting Requirements: | For each year after the Proponent commences transportation of ore via the Tote Road under the Early Revenue Phase Proposal, the Proponent shall include in the Annual Report to the NIRB, a summary of the total amount of ore shipped via the Tote Road for the previous calendar year. |

Transboundary Effects

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| Term and Condition No. | 180 |
| Category: | Transboundary Effects – Makivik Corporation involvement in the Marine Environment Working Group |
| Responsible Parties: | The Proponent, members of the Marine Environment Working Group |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To enable Makivik Corporation and Nunavik communities near shipping lanes to remain informed and involved in those shipping activities which could affect the marine environment and marine mammals. |
| Term or Condition: | The Marine Environment Working Group established for this Project shall invite a representative from Makivik Corporation to be a member of the Group |
| Reporting Requirements: | To be developed following approval by the Minister |

***Commentary:** As expressly noted in the Minister's letter of April 28, 2014, this term and condition applies equally to all aspects of the Mary River Project, including the Early Revenue Phase.*

| | |
|--------------------------------|--|
| Term and Condition No. | 181 |
| Category: | Transboundary Effects – Marine Environment Working Group reporting |
| Responsible Parties: | The Proponent, members of Marine Environment Working Group |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To enable Makivik Corporation and Nunavik communities near shipping lanes to remain informed and involved in those shipping activities which could affect the marine environment and marine mammals. |
| Term or Condition: | Regardless of whether Makivik Corporation participates as a member of the Marine Environment Working Group, the Marine Environment Working Group will provide Makivik Corporation with regular updates regarding the activities of the Marine Environment Working Group throughout the Project life cycle. |
| Reporting Requirements: | To be developed following approval by the Minister |

***Commentary:** As expressly noted in the Minister's letter of April 28, 2014, this term and condition applies equally to all aspects of the Mary River Project, including the Early Revenue Phase.*

| | |
|-------------------------------|--|
| Term and Condition No. | 182 |
| Category: | Transboundary Effects – Reporting to Marine Environment Working Group (MEWG) |

| | |
|--------------------------------|---|
| Responsible Parties: | The Proponent, Makivik Corporation |
| Project Phase: | Construction, Operations, Temporary Closure /Care and Maintenance, Closure and Post-Closure Monitoring |
| Objective: | To enable Makivik Corporation and Nunavik communities near shipping lanes to remain informed and involved in those shipping activities which could affect the marine environment and marine mammals. |
| Term or Condition: | Baffinland shall make available to Makivik Corporation any ship route deviation reports provided to the NIRB in accordance with the terms and conditions set out in Section 4.12.4 of the Final Hearing Report. |
| Reporting Requirements: | To be developed following approval by the Minister |

Commentary: *As expressly noted in the Minister's letter of April 28, 2014, this term and condition applies equally to all aspects of the Mary River Project, including the Early Revenue Phase.*

APPENDIX A – MONITORING PROGRAM

[To be developed]

June 5, 2014

Government of Canada comments on Amendment Number 1 to the North Baffin Regional Land Use Plan:

1. With reference to section 2.2.1, first paragraph, the corridor is described generally in position and length. The corridor has not been provided with a description in width. If either of the following two cases apply, it is important to include a corridor width:

IF Section 2.2.1 includes conformity requirements (prohibitions) on other project proposals. While it is not entirely clear, it appears this may currently be the case in this draft.¹

IF Section 2.3 constrains the ability to adjust routing for final design. This IS NOT currently the case in this draft (which we believe is the correct approach).

Therefore, the proposed amendment should be clear as to whether it introduces any new prohibitions or conformity requirements. If it does, then a clear statement and a clear geographic boundary must be given for those prohibitions.

2. With reference to section 2.2.1, and specifically the general geographic description of the corridor, the current text states that the corridor is "more specifically described on Schedule "A" of the Amendment". We observe that the map is helpful in giving more general geographic guidance in visual format, as opposed to being a more specific description. Therefore it is recommended that the text should state "as generally illustrated in Schedule A". This recommendation should carry through other references to Schedule A including those in the Background document, including section 1.3.

3. With reference to section 2.2.1, second paragraph, we recommend removing any reference to the application for amendment which is external to the plan, and revising the text to provide greater clarity regarding the definition of the railway and associated service roads by adding the underlined phrases and removing the text that is struck-through as follows:

A transportation corridor, for the purposes of this Amendment, includes (i) a railway as defined in the Railway Safety Act and (ii) railway service roads. For greater certainty, for the purposes of this Amendment "railway" includes as well as any infrastructure and support facilities, including camps, quarries, terminals, loading and unloading facilities

¹ The ambiguity is found in the following paragraph:

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, provided such use does not create or contribute to a safety hazard or otherwise disrupt the operation of the railway and associated facilities.

The conditional language ("unless") may imply a prohibition for those things that do not satisfy the condition that follows.

~~and any other related systems associated with a railway and or railway service road, and as outlined in the application for Amendment. It may also include other roads (winter or permanent) a pipeline, transmission lines and other infrastructure associated with the safe communication and movement of goods and/or information...~~

4. With reference to section 2.2.1, second paragraph, we recommend

(a) the removal of text suggesting the transportation corridor is limited to a single user or single use. This approach is in line with our policy guidance for the inclusion of general application transportation corridors within a land use plan. We maintain a preference for a multi-use, multi-user, reusable transportation corridor as opposed to a project specific transportation corridor. (While an owner of infrastructure can of course control its use, it is a different thing entirely to limit such use by way of a regulatory instrument).

(b) the incorporation by reference of numerous external files is unnecessary and not helpful, and it is not clear whether those references are intended to expand the meaning, or contract the meaning of the relevant terms.

(c) the listing of components in this section appears redundant to the earlier expansive definition of "railway".

(d) We therefore recommend removing the text that is shown struck-through as follows:

~~...from the Mary Rive Mine Site, as proposed as part of NPC File Baffinland Mary River Project INAC File # N2008T0014, QIA File #LUA-2008-008 DFO — 2008 MR — NWB File # 2AM-MRY and is further described in Baffinland Iron Mines Corporation application for amendment, February 2012, and as approved by Nunavut Impact Review Board Project Certificate No. 005 and which may include:~~

- ~~• a railway, including rail embankments, railway ties and rails, bridges, culverts, tunnels, railway crossings, signals, telecommunication facilities, piers, and piles, yards, terminals and service and storage facilities associated with the railway;~~
- ~~• service roads as well as any infrastructure and support facilities, including camps, quarries, terminals, loading and unloading facilities and any other related systems associated with railway and service roads;~~
- ~~• other roads (winter or all weather), winter airstrips/icestrips, a pipeline; fuel storage, transmission lines; and~~
- ~~• any other infrastructure required to ensure the safe operation and movement of trains to service the Mary River Project, or associated with the safe communication and movement of goods and/or information from or to the Mary River Project.~~

~~The transportation corridor described in this Amendment may be used to service the Mary River Project only.~~

Consistent with the idea that the corridor is not to be limited to a single purpose, we suggest revising the title of the Amendment to reflect this position by adding the underlined phrases and removing the text that is struck-through as follows:

Amendment No. 1 ~~Mary River Mine Site~~ Steensby Inlet Railway Transportation Corridor

5. With reference to section 2.3, first and second paragraphs, we recommend revising the text by removing the text that is shown struck-through as follows:

The implementation of this Amendment shall be consistent and in accordance with the Nunavut Land Claims Agreement and ~~the policies of the North Baffin Regional Land Use Plan.~~

The location of the transportation corridor is approximate. Routing adjustments arising from detailed design and geotechnical considerations (i.e. ice lenses, protection of sensitive landforms) shall not require a further amendment to the NBRLUP ~~unless the intent of the NBRLUP policies on this Amendment are changed. Routing adjustments referred to above must not take the infrastructure improvements, contemplated by this amendment, outside of the transportation corridor.~~

Some land use plans have specific and discrete “policies”, clearly and individually labeled as such. The NBRLUP did not use that drafting approach. Therefore, in referring to the “policies” of the NBRLUP, it is not clear whether that is a reference to a subset of the plan (i.e. only the “policies”) or whether it is a reference to the plan as a whole.

To resolve this lack of clarity, we recommend that references to “policies” be removed, so that the provisions refer to the Plan as a whole. This is consistent with the requirement that any future interpretive issues are resolved by reading the Plan holistically and purposively. We believe this is consistent with the intended meaning. With respect specifically to the second proposed deletion above, the only way the “intent” or “policies” of the plan could change is through plan amendment. The phrase is therefore redundant and potentially confusing and therefore should be deleted.

We recommend deleting the final sentence of section 2.3 in the absence of a fully defined geographical boundary established for the corridor. Without a corridor width, the statement “outside of the transportation corridor” creates uncertainty when determining the limits of the transportation corridor. We suggest deleting this sentence unless a corridor width is established for the transportation corridor.

6. With reference to section 2.3, second paragraph, we recommend revising the text as shown to expand and clarify the potential design considerations which may result in routing adjustments.

The location of the transportation corridor is approximate. Routing adjustments arising from detailed design ~~and geotechnical~~ considerations (i.e. ~~ice lenses~~, including safe routing, geotechnical considerations, avoidance of ice rich or hazardous terrain, protection of sensitive landforms, etc.) shall not require a further amendment to the NBRLUP...



March 6, 2017

Wayne McPhee
Baffinland Iron Mines Corporation
2275 Upper Middle Road East – Suite 300
Oakville Ontario L6H 0C3 Canada

Dear Mr McPhee:

RE: NPC File # 148420 Mary River Phase 2 Expansion Project

The following works and activities have been proposed in the above-noted project proposal:

1. The construction and operation of a new rail line approximately 110 km in length and generally following the routing of the existing Tote Road to connect the Mary River Mine Site with the Milne Inlet Port Site.
2. At the Milne Inlet Port Site, the development of a second ore dock to accommodate Cape sized vessels, a second ship loader, railway unloading and maintenance facilities, and additional support infrastructure, in addition to an enclosed crushing facility.
3. The ore shipping season is proposed to be from July 01 to November 15, annually. All efforts will also be made to ship fuel and freight during the open water season. However, the proponent is seeking the ability to conduct winter sea lift of freight if required to support on-going operations.

A complete description of the project proposal reviewed by the NPC can be accessed at the following address:

<http://npc.strata360.com/portal/project-dashboard.php?appid=148420&sessionid=>

The Nunavut Planning Commission (NPC) has reviewed the above noted project proposal. The NBRLUP was previously amended to include a transportation corridor associated with the Mary River Project (Appendix Q of the NBRLUP), but the previous amendment does not contemplate the proposed works and activities identified above. The NPC has determined that the construction and operation of a rail line, additional infrastructure at the Milne Inlet Port Site, and a proposed winter sealift constitute the development of a transportation corridor. Sections 3.5.11 and 3.5.12 of the North Baffin Regional Land Use Plan state:

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 NLCA, 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]

The NPC requests that you provide the additional information required under section 3.5.11 of the NBRLUP for the above-noted project proposal, which has been returned to you for further editing. The NPC reserves the right to request additional information as may be required.

My office would be pleased to discuss this request with you. If you have any questions, please do not hesitate to contact me at (867) 983-4632.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Savoy". The signature is written in a cursive, flowing style.

Jonathan Savoy
Manager of Implementation
Nunavut Planning Commission

Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, Nunavut X0B 0C0

March 17, 2017

Attention: Sharon Ehaloak, Executive Director

RE: Proposal for Amendment to the NBRLUP in relation to the Mary River Phase 2 Expansion Project (NPC File # 148420).

On February 3, 2017 Baffinland Iron Mines Corporation (Baffinland) re-submitted the Project Proposal for the Mary River Phase 2 Expansion Project (Project Proposal) to the Nunavut Planning Commission (NPC) for a Land Use Conformity Determination as directed by the Nunavut Impact Review Board (NIRB).

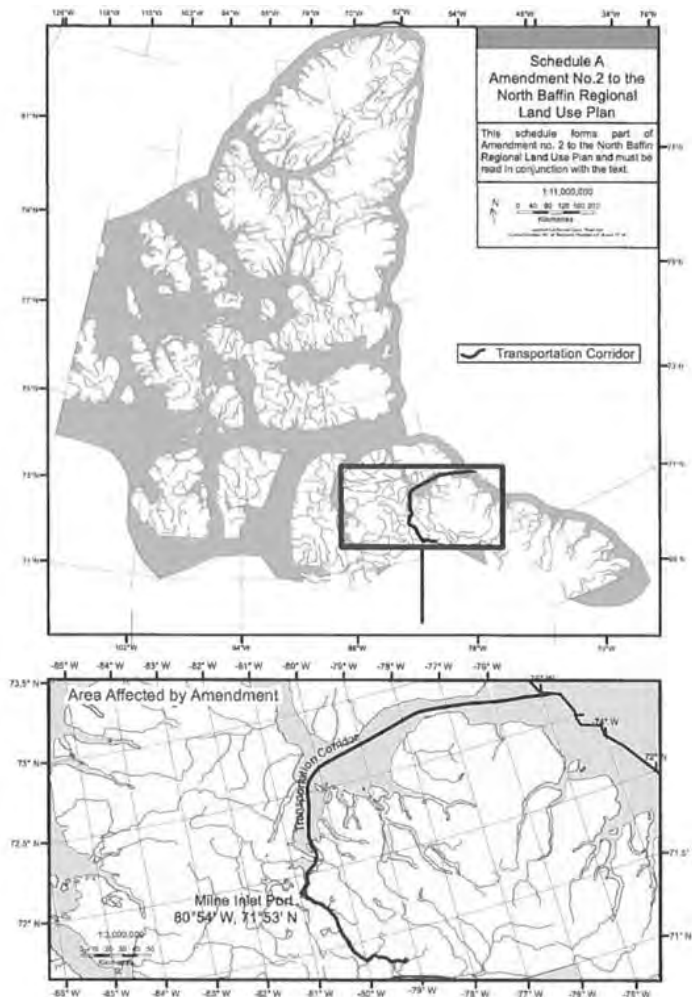
The NPC's correspondence dated March 06, 2017 stated that the proposed rail line, additional

infrastructure at the Milne Inlet Port site and the winter sealift of freight would constitute the development of a transportation corridor and requested that Baffinland provide additional information under section 3.5.11 of the North Baffin Regional Land use Plan (NBRLUP).

The NBRLUP currently includes the Milne Inlet Tote Road and Marine Transportation Corridor which was established under section 3.5.11 of the NBRLUP. Baffinland is not proposing a new route and, as shown in the Project Proposal, all activities would occur within the existing Corridor.

Baffinland acknowledges that the NPC is currently in the process of finalizing the Draft Nunavut Land Use Plan (DNLUP) and has limited capacity to process amendments to the existing Land Use Plans which will be replaced once the DNLUP process is completed. In order to advance the ongoing Conformity Determination process in the most efficient and comprehensive manner possible Baffinland respectfully requests that the NPC pause the current Conformity Determination process, consider the following proposed amendment to the

NBRLUP and, once completed, make a positive conformity determination on the Project Proposal.





Proposal for Amendment

Baffinland is proposing under section 59 (1) of the Nunavut Planning and Project Assessment Act (NuPPA) an amendment to the existing Milne Inlet Tote Road and Marine Transportation Corridor (Appendix Q of the NBRLUP) to ensure that the proposed activities are consistent with approved planning policies and objectives of the Nunavut Agreement and the NBRLUP. Specifically, Baffinland proposes to amend Appendix Q to provide for transportation by rail through the corridor.

Appendix Q allows for “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”. Therefore it can be concluded that the development of a second ore dock to accommodate Cape sized vessels, a second ship loader, railway unloading and maintenance facilities and additional support infrastructure is in compliance with the NBRLUP and no amendment to Appendix Q would be required.

For clarification Baffinland is proposing to have the ability to conduct winter sea lifts of freight from December 01 through February 28 annually with a maximum of two events during this period. Fuel and iron ore will not be transported during these events. This additional information and the recent positive conformity determination made by the NPC for similar activities indicate that no amendment to Appendix Q would be required, however, wording is proposed for clarification.

Baffinland acknowledges and appreciates the time taken by the NPC staff to engage in informal meetings with us in relation to the Project Proposal. Further, Baffinland respects the mandate of the NPC and is seeking to advance the Mary River Project in compliance with all legislative and regulatory requirements established under the Nunavut Agreement.

Documentation addressing the additional information requested in your letter of March 06, 2017 is attached (Attachment 1). Additionally, in accordance with Section 59 (1) of the NuPPAA and the NPC Internal Procedure “Amendments to Land Use Plans (March 2015)” attached is the proposed amendment to Appendix Q (Attachment 2).

We request that the NPC consider the proposed amendment and, if it considers it appropriate to do so, conduct a public review. **Baffinland urgently requests that the amendment process be executed as expeditiously as possible** to allow the Project Proposal to return to the NIRB process for a full and comprehensive environmental assessment.

Thank you,

A handwritten signature in black ink, appearing to read "T. Burlingame".

Todd Burlingame

VP Sustainable Development

Cc/ Aluki Kotierk, President, NTI; PJ Akeeagok, President, QIA; Honorable Carolyn Bennett, Minister INAC; Hon. Joe Savikataaq, Minister, Department of Environment, GN

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Mary River Phase 2 Expansion Project

ATTACHMENT #1

Response to NPC Request for Additional Information

NPC File #148420

March 17, 2017



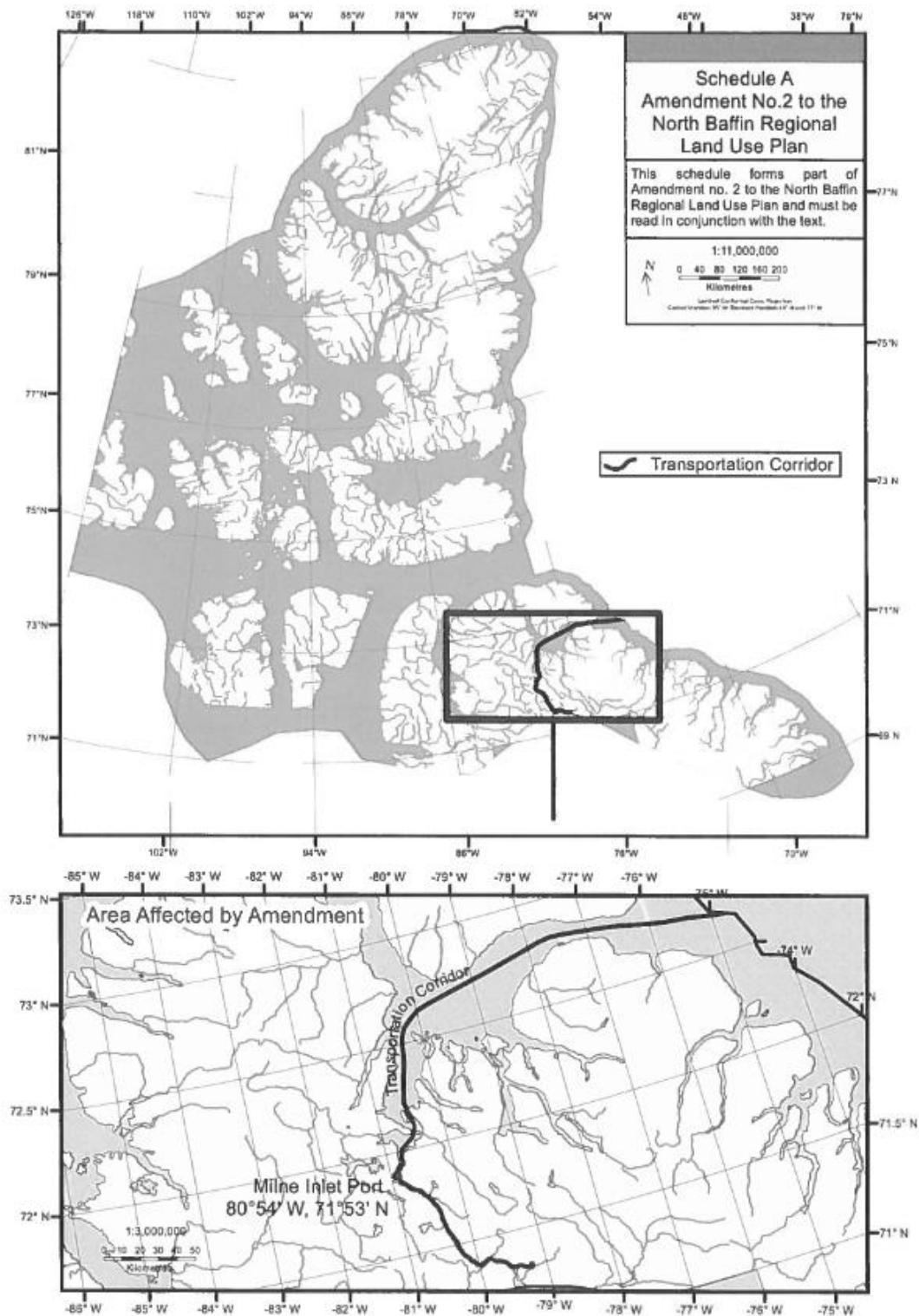
1 Introduction

On March 6, 2017, the Nunavut Planning Commission (NPC) requested Baffinland Iron Mines Corporation (Baffinland) to submit additional information required under section 3.5.11 of the North Baffin Regional Land Use Plan (NBRLUP) for the Mary River Phase 2 Expansion Proposal (Project Proposal) request for Land Use Conformity Determination.

The Project Proposal submitted to the NPC on March 03, 2017 includes the construction of a railway within the Milne Inlet Tote Road and Marine Transportation Corridor that follows the existing Tote Road. This corridor has been established and is recognized as a transportation corridor in both the Nunavut Agreement and the NBRLUP (See Figure 1.1).

Baffinland has engaged with the Hamlet of Pond Inlet and Mittimatalik Hunters and Trappers Organization (MHTO) for the purpose of alerting them to the potential requirement to amend the NBRLUP for the purpose of including the use of rail in the definition of the Milne Inlet Tote Road and Marine Transportation Corridor and allowing for a positive conformity determination to be made by the NPC prior to returning to the Project Proposal back to NIRB for a comprehensive environmental assessment. During the engagement no opposition to include railway development as an acceptable land use within the existing corridor was raised by the participants.

Figure 1.1 Existing Transportation Corridor as shown in Schedule A to Appendix Q of the NBRUP (NPC, 2014)



2 Response

The requirements of section 3.5.11 of the NBRLUP include:

- An assessment of alternative routes;
- The cumulative effects of the preferred route, and;
- Reasonable options for other identifiable transportation and utility facilities

Assessment of alternative routes:

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 (see Figure 2.1). No other alternatives to the route are considered feasible. There would be no change to the marine component of the existing transportation corridor (see Figure 2.2).

Figure 2.1 The Northern Transportation Corridor and Proposed North Railway

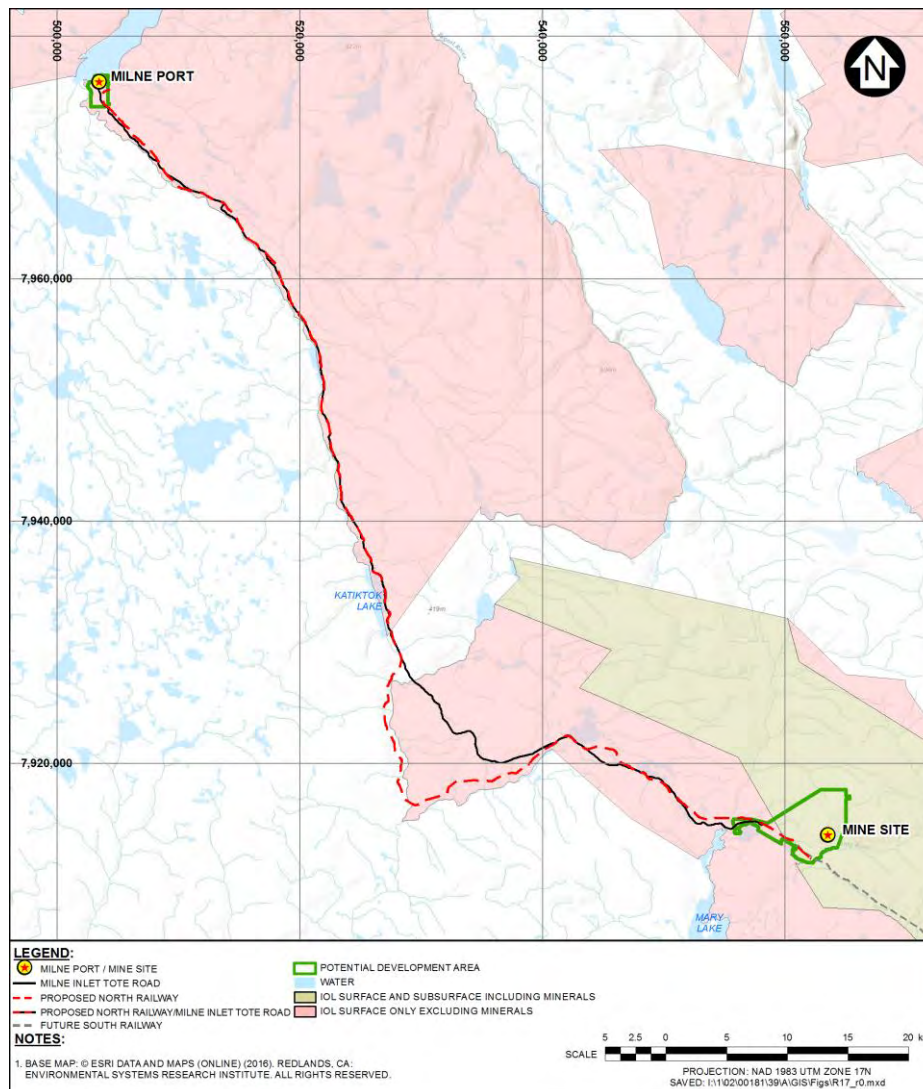


Figure 2.2 The Northern Shipping Corridor



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

- Existing infrastructure;
- Technical feasibility;
- Regulatory acceptability;
- Cost-effectiveness;

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- Impacts on the natural environment;
- Impacts to the socio-economic environment (mainly land use); and
- Community preference or acceptability.

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.

The consideration of these criteria and factors meant a preferred route that follows the existing Tote Road (see Figure 2.1) 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.

- The location of the railway alignment in relation to outpost camps as well as hunting and travelling routes is an important consideration. The only outpost camp in the area is located on the west side of Camp Lake; this is the MHTO cabin that Baffinland constructed in 2013 to compensate for the former MHTO cabin located within the Mine Site. In the vicinity of the outpost camp, the proposed railway is located further away than the existing Milne Tote Road.
- Inuit travel extensively throughout the North Baffin region, including in the vicinity of the terrestrial component of the existing transportation corridor and the proposed north railway. Primary travel routes, derived from Inuit knowledge workshops completed in the late 2000's for the Project, were found to generally travel parallel to the terrestrial component of the existing transportation corridor alignment without crossing it and have numerous alternatives.

No change is proposed to the route of the marine component of the existing transportation corridor.

Cumulative Effects of the preferred route:

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)).

- 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.

Baffinland also proposes the ability to conduct winter sea lift of freight if required to support on-going operations. The winter sea lifts of freight would only occur from December 01 through February 28 annually with a maximum of two events during this period. Fuel and iron ore will not be transported during these events. This activity has previously been determined to be in conformance with the NBRLUP.

Options for other identifiable transportation and utility facilities:

Baffinland is not aware of any other possible communication and transportation initiatives along the terrestrial component of the corridor or the Northern Shipping corridor. Milne Port will be developed for the exclusive use of Baffinland. No other potential users of this facility have been identified.



Mary River Phase 2 Expansion Project

ATTACHMENT #2

Proposed Amendment to Appendix Q
of the
North Baffin Regional Land use Plan

NPC File #148420

March 17, 2017

Proposed Amendment to Appendix Q of the North Baffin Regional Land Use Plan

Part I: Explanatory Notes

1.1 Introduction

Pursuant to subsection 59(1) of the *Nunavut Planning and Project Assessment Act* ("NuPPA"), Baffinland Iron Mines Corporation ("Baffinland") proposes to amend Appendix Q of the North Baffin Regional Land Use Plan (Appendix Q). These Explanatory Notes are provided for background and information purposes only and do not form part of the Amendment.

Proposed revisions to the current text of Appendix Q are shown in Part 2 in highlighted text.

1.2 Purpose

The purpose of the proposed amendment is to clarify that the existing Milne Inlet Tote Road and Marine Transportation Corridor as described and defined in Appendix Q of the North Baffin Regional Land Use Plan may be used for rail transportation and related infrastructure, expansion of the existing port facilities and for winter sealift.

1.3 Scope of Proposed Amendment

The description of the lands and location of the routing of the Milne Inlet Tote Road and Marine Transportation Corridor as depicted in Appendix Q remain unchanged. The Amendment does not involve the establishment of a new route or change of location of the existing corridor established under Appendix Q or any change to the marine component of the existing transportation corridor.

The preferred railway route will follow along the existing Tote Road and will consequently not result in any new route for linear infrastructure. There will be no interference with the public right of access to the transportation corridor as described in Schedule 21-2 of the *Nunavut Agreement* or with the activities of traditional land users.

No new route is proposed for the marine component of the transportation corridor.

The proposed amendment will:

1. Revise the description of the transportation corridor (bullet 1, Appendix Q) by including a reference to potential railway and related infrastructure and to the Mary River Phase 2 Expansion Project Proposal;
2. Revise the description of the terrestrial component of the transportation corridor (bullet 2, Appendix Q) by including a reference to rail and related infrastructure; and

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3. Revise the description of the marine component of the transportation corridor (bullet 3, Appendix Q) by including a reference to a winter sea lift during the months of December, January and February.

The inclusion of rail as a permitted mode of transportation within the Milne Inlet Tote Road and Marine Transportation Corridor will:

- reduce interference with traditional land uses and maintain safety, access and ease of travel with the use of designated caribou, snowmobile and ATV crossings, and Hunter and Visitor Site Access procedures.
- promote overall economic feasibility and long-term sustainability of the Mary River Project by optimizing the transport and shipping of ore
- lessen adverse environmental effects currently associated with road transportation (reduced dust and sedimentation and noise, improved air quality)
- diminish the likelihood of injuries or fatalities and other disturbances to land users and wildlife

The amendment to the marine component of Appendix Q to allow for the conduct of a winter sea lift of freight if required to support on-going operations is proposed for clarification purposes only as the Nunavut Planning Commission has previously issued a positive conformity determination in respect of similar activities.

Since Appendix Q already allows for “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”, no further amendment to the marine component with respect to the development of a second ore dock, ship loader, railway unloading and maintenance facilities and additional support infrastructure is required.

No other changes to Appendix Q are proposed.

1.5 Stakeholder Engagement

Baffinland has consulted with potentially affected stakeholders, including the 5 North Baffin communities, with respect to the use of rail as part of the Mary River Phase 2 Expansion Project. Baffinland has also consulted with the Mittimatalik Hunters and Trappers Organization and the Pond Inlet Hamlet Council with respect to the proposed amendment of the North Baffin Regional Land Use plan to include rail and associated activities as permitted use of the Milne Inlet Tote Road and Transportation Corridor and no objections to the proposed amendment have been expressed.

Part 2: Proposed Amendment

Draft Proposed Amendment to Appendix "Q" of North Baffin Regional Land Use Plan

The lands generally located North of Mary River, North Baffin Island, 1000km North of Iqaluit, and generally described as the lands located North of Mary River, North Baffin Island, 1000 km 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 110 km to the Milne Port at approximately 71.53N-83.54W 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. Together they include the Milne Inlet Tote Road, a potential railway and related infrastructure, 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 and the Mary River Phase 2 Expansion Project Proposal.
 - 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 is available for use for a railway and for related infrastructure and may include, bridges, culverts, tunnels, crossings, signals, telecommunication facilities, yards, terminals and service and storage facilities associated with a road or railway as well as any other infrastructure required to ensure the safe operation and movement of motor vehicles, ~~or~~ carriages or train cars.
 - 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
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for ensuring the safe passage of vessels. For greater certainty, the marine corridor may be used for shipments of freight by winter sealift through ice during the months of December, January and February.

- 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, 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 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 NLCA.
- No new prohibitions are contained or proposed in this Amendment.



NIRB File No.: 08MN053

NWB File No.: 2AM-MRY1325 - Amendment No. 1/G1

INAC File No.: N2008T0014

DFO File No.: 2008 MR

QIA File No.: LUA-2008-008

November 30, 2017

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

Goump Djalogue
Nunavut Planning Commission
P.O. Box 1797
Iqaluit, NU X0C 0H0

Sent via email: aglukark@nunavut.ca; gdjalogue@nunavut.ca;

Re: Summary of Comments Received by the Nunavut Impact Review Board in Respect of the Baffinland Iron Mines Corporation Application to the Nunavut Planning Commission to Amend the North Baffin Regional Land Use Plan (NBRLUP Amendment #3)

Dear Brian Aglukark and Goump Djalogue:

This correspondence is provided to the Nunavut Planning Commission (the Commission) on behalf of the Nunavut Impact Review Board (NIRB) as follow up to the NIRB's October 26, 2017 call for comments in relation to the North Baffin Regional Land Use Plan (NBRLUP) Amendment #3 Application by Baffinland Iron Mines Corporation (Baffinland or the Proponent) resulting from the activities and undertakings proposed in Baffinland's Phase 2 Development Project Proposal (the Project). As the Commission is aware, the NIRB's contribution to the review of the NBRLUP Amendment #3 Application is limited to providing the Commission with the Board's advice regarding whether the proposal adequately addresses the information requirements set out in Appendices J and K of the NBRLUP. The NIRB's comment request to the public and intervening parties included requesting parties to address the following:

- Whether sufficient information has been provided regarding the possible environmental and socio-economic impacts of the proposed development of the transportation corridor and associated works and activities;
- Whether alternatives to the proposed routing of the transportation corridor have been thoroughly addressed within the proposal, with sufficient consideration demonstrated for the environmental and socio-economic factors, technical and cost considerations of each;
- Whether parties were satisfied with the level of information provided regarding the suitability of the proposed corridor for the inclusion of additional communication and transportation initiatives, including its environmental, socio-economic and terrain engineering consequences and the potential cumulative impacts of the project; and
- Whether the proposed corridor has the potential to negatively impact any of the following: 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; and areas of high scenic, historic, cultural and archaeological value.

In advance of the Commission's upcoming Public Hearing (December 4 and 5 in Pond Inlet), the NIRB provides this summary of the comments received to date addressing the requirements of Appendix J and K of the NBRLUP in relation to the NBRLUP Amendment #3 Application. In this correspondence, the NIRB has also highlighted a few key points identifying where the Commission's advice and direction to the NIRB would be beneficial if the Commission were to decide that the Amendment #3 Application should be granted, and the Project would then be deemed to conform and proceed to the NIRB for further assessment.

Please note that this summary is not offered as, nor should it be construed as, an indication nor other form of direction in respect of the ultimate issue before the Commission for decision-making (i.e. the acceptability of Baffinland's proposed amendment to the NBRLUP). This summary also will not pre-determine or otherwise limit the NIRB's ultimate disposition of any future NIRB reconsideration process of the terms and conditions in Project Certificate No.: 005, under Article 12, Section 12.8.2 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and s. 112 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (NuPPAA).

SUMMARY OF COMMENT SUBMISSIONS BY THE PARTIES

On or before November 17, 2017, the following parties provided comments in response to the NIRB's October 26, 2017 request:

- Qikiqtani Inuit Association (QIA);
- Government of Canada provided by Indigenous and Northern Affairs Canada (INAC); and
- World Wildlife Fund (WWF).

It should be noted that in their submissions all three (3) commenting parties referenced not only the submissions provided to NIRB directly, but also the submissions provided by the parties to the Commission on October 2, 2017 (INAC and WWF) and November 17, 2017 (QIA).

In addition, the Proponent also provided a submission on November 17, 2017 to the NIRB in response to the NIRB's request for comments. All submissions received by the NIRB have been enclosed for your reference.

The substantive comments of the Qikiqtani Inuit Association (QIA) were provided in the QIA's submission to the Commission filed with both the Commission and attached to the November 17, 2017 cover letter to the NIRB. The QIA notes that Baffinland has not yet provided independent assessment information about the alternatives to transportation by rail versus road, the suitability of the proposed rail route and the suitability of the corridor for the inclusion of other possible communication and transportation infrastructure. The QIA questions whether, in deferring the provision of this information to a subsequent NIRB assessment it can be said that Baffinland's Amendment #3 Application has met the information requirements set out in Appendix J of the NBRLUP.

Similarly, the QIA notes that Baffinland has declined, at this point in the process, to provide information that demonstrates the effect of the proposed railway on the scope, width and size of the existing transportation corridor as well as information regarding the health and safety implications of permitting a multi-modal use for both railway and vehicular traffic in close proximity. Consequently, the QIA questions whether, having deferred supplying this type of information to the later stage of assessment by the NIRB, the Proponent has complied with the assessment guidance provide in Appendix K of the NBRLUP.

The Government of Canada submission, as provided by Indigenous and Northern Affairs Canada (INAC) concludes that because the requirements in Appendices J and K of the NBRLUP were adequately considered in 2014, and because Baffinland's Amendment #3 Application involves a determination of whether the proposed land use is reasonable within an existing transportation corridor approved in 2014, the information provided by Baffinland to date is adequate for the purposes of the Commission's consideration of the Amendment #3 Application. INAC also notes that the authorizing agencies and departments of the federal government will provide further and more detailed comments regarding the potential environmental and socio-economic impacts of the proposed activities if the proposal advances to the NIRB's impact assessment process.

The World Wildlife Fund (WWF) concluded that, recognizing that Baffinland's Amendment #3 Application does not propose a new corridor, but rather, a modified use of the previously approved corridor: "The information requirement [of Appendix J] is met in terms of Baffinland having provided a response to each of these items." In terms of Appendix K, however, WWF suggests that Baffinland's current application does not "...adequately address the capability of topography, soil, permafrost and wildlife to support or withstand the development of a railway, nor does it speak to the availability of granular supplies to meet the needs of the proposed railway development."

In Baffinland's response, the Proponent noted that it should be recognized that extensive effects assessment information that is relevant to the Amendment #3 Application has previously been provided during the NIRB's review of the original Mary River Project, as well as the NIRB's reconsideration of Project Certificate No.: 005 and assessment of the Early Revenue Phase Project. The Proponent indicated the Commission's consideration of Amendment #3 Application involves consideration of a "new mode of transportation within an existing corridor" and on that basis, the information provided by the Proponent to date is sufficient for the NIRB and the Commission to apply the guidance in Appendices J and K of the NBRLUP.

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 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.

With regards to the requirements of NBRLUP Appendix K that transportation corridors shall "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", 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, the NIRB also notes that 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.

COMMISSION GUIDANCE TO THE NIRB

As noted in the QIA's submissions filed with the Commission on October 2, 2017, there are some key issues that may be considered during the Commission's decision-making in respect of the Amendment #3 Application that could be highly relevant to the NIRB if the Phase 2 Development Project Proposal were to proceed to the NIRB for assessment.

The NIRB highlights the following two (2) points where guidance from the Commission would be particularly beneficial:

- 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; and
- Recognizing the likely relevance of Caribou Protection Measures (CPMs) as developed by the parties as referenced in Appendix I of the NBRLUP and developed during the NIRB's assessment of the Early Revenue Phase Project Proposal, the NIRB would benefit from the Commission's advice and 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.

CONCLUSION

The NIRB notes that unless the Commission requests specific additional advice or information from the NIRB, this correspondence concludes the advice and expertise that can be provide by the NIRB at this point in the Commission/NIRB joint review process. If the Commission or any other party has questions or requires clarification regarding the NIRB's role in the Commission/NIRB joint review process, please contact the undersigned directly at (867) 983-4608 or via e-mail at rbarry@nirb.ca.

Sincerely,

A handwritten signature in black ink that reads "Ryan Barry". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Todd Burlingame, Baffinland Iron Mines Corp.
Karén Kharatyan, Nunavut Water Board
Stephen Williamson-Bathory, Qikiqtani Inuit Association
Solomonie Shoo, Qikiqtani Inuit Association
Joel Fortier, Qikiqtani Inuit Association
Tracey McCaie, Indigenous and Northern Affairs Canada
Veronique D'Amours-Gauthier, Fisheries and Oceans Canada
Rob Johnstone, Natural Resources Canada
Rachelle Besner, Natural Resources Canada
General Account, Transport Canada
Mary River Project Distribution List

Enclosed (4): QIA Submission to NIRB Re File No. 08MN053 (November 17, 2017)
GOC Submission to NIRB Re File No. 08MN053 (November 17, 2017)
WWF Submission to NIRB Re File No. 08MN053 (November 17, 2017)
BIMC Submission to NIRB Re File No. 08MN053 (November 17, 2017)



Nunavut Planning Commission
P.O. Box 1797
Iqaluit, NU X0A 0H0

December 19, 2017

Dear Sirs:

Re: Baffinland Application to Amend Appendix Q of the North Baffin Regional Land Use Plan

Baffinland would like to thank the Chair, members of the Nunavut Planning Commission (the Commission), members of the Commission staff, Pond Inlet community members, and all other participants to the informal public hearing, for organizing, conducting, and participating in the meeting. Baffinland was pleased to provide further information on the amendment application during the informal public hearing, to answer questions from members of the Commission, to listen carefully to the concerns of the Hamlet of Pond Inlet, and individuals, and to do our best to respond to those concerns in a transparent and constructive way.

In response to comments made by community members during the informal public hearings, information requests made by the Commission during the course of the informal public hearings, and in response to a letter from NIRB dated November 30, 2017, Baffinland is pleased to provide the following additional information:

1. **Schedule A:** Response to NIRB Letter to NPC of November 30, 2017
2. **Schedule B:** Summary of Benefits
3. **Schedule C:** Restricted Activity Zone Map
4. **Schedule D:** Letter to GN and QIA from Baffinland dated December 19, 2017

In this final submission, Baffinland will summarize the key points respecting the application for amendment, what was learned during the course of the review of the application and the informal public hearing, and Baffinland's constructive responses to the submissions and presentations.

Baffinland has applied to the Commission for an amendment to Appendix Q of the North Baffin Regional Land Use Plan (NBRLUP) to allow for the use of rail within the existing Milne Inlet Tote Road and Marine Transportation Corridor. Extensive information has been filed by Baffinland in support of this application, demonstrating that the proposed amendment complies with the requirements of the NBRLUP, including Appendices J and K. The Government of Nunavut (GN) and the Department of Indigenous and Northern Affairs (INAC) have also filed submissions with the Commission in support of the proposed amendment. In addition, letters in support of both the Mary River Project and the proposed amendment have been filed with the Commission by residents of various North Baffin communities, the municipality of Igloolik, Qikiqtani Industry Limited and the NWT & Nunavut Chamber of Mines.

Baffinland is aware, however, that during the course of public hearings in Pond Inlet on December 4 and 5, 2017, opposition to the proposed amendment was expressed by members of the Mary River Phase 2 Review Committee, the Mittimatalik Hunters and Trappers Organization (MHTO) and some individual residents. In addition, subsequent to the hearings, letters objecting to the proposed amendment were filed by the Resolute Bay and Hall Beach Hunters and Trappers Organizations.

The substance of such objections fall into one of two categories, neither of which are germane to land use planning.

First, concerns have been expressed in relation to the potential adverse environmental effects of the construction and operation of a rail through the existing transportation corridor, including dust, limitations on hunter access, and potential impacts upon caribou and other wildlife. While such concerns are clearly important, since Baffinland has complied with the requirements of Appendices J and K of the NBRLUP (to the extent they are applicable to this application), the Nunavut Impact Review Board (NIRB) is the more appropriate forum for the identification and assessment of environmental effects. The potential environmental effects of the Phase 2 Project Proposal, including the construction and operation of rail, will be comprehensively addressed during the NIRB process, should the Phase 2 Project be allowed to proceed to environmental assessment and community members will be afforded an opportunity to voice their concerns during public hearings.

In particular, 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.

Secondly, concerns specific to Pond Inlet have been expressed in relation to the asserted inequitable distribution of economic benefits flowing from the Mary River Project under the Inuit Impact and Benefit Agreement (IIBA). 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 and must be determined by Qikiqtani Inuit Association (QIA) in consultation with its membership. Such issues are not relevant to the substance of the land use planning amendment application. However, during the course of the public hearings, in response to questioning by Baffinland, participants were supportive of Baffinland and the QIA engaging directly with the community to discuss this issue. Accordingly, 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. On December 19, 2017, pursuant to Project Certificate Condition 160, Baffinland wrote to both GN and QIA proposing a meeting at the earliest possible opportunity to discuss this issue (See Schedule D to this Letter).

Baffinland submits that the entirety of the information which has been filed with the Commission supports the proposed amendment of Appendix Q of the NBRLUP and wishes to assure the Commission that it is committed to responding to community concerns relating to potential environmental effects

and distribution of benefits through the environmental assessment process as well as ongoing consultation and collaboration. 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).

Taking all of the above into consideration, Baffinland requests that the NPC recommend that Appendix Q of the NBRLUP be amended to provide for transport by rail within the existing transportation corridor to enable the Phase 2 proposal to proceed to environmental assessment.

Once again, Baffinland thanks the Commission and its staff, and all of the participants in the informal public hearings for their input and guidance. We thank the people of Pond Inlet for their hospitality.

Thank you,

A handwritten signature in black ink, appearing to read 'T. Burlingame', with a stylized flourish at the end.

Todd Burlingame
VP Sustainable Development

Schedule A:

Response to NIRB Letter to NPC of November 30, 2017

In its letter to NPC of November 30, 2017 the NIRB indicated that, *“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.”* and 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 the Appendix K guidelines that transportation corridors shall *“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.*

Baffinland has prepared the following additional information on the topics of 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 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. 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). From km 84.5 to the Mine Site, the railway once again parallels the Tote Road.

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.

With respect to granular supplies, it should be noted that these matters are subject to change based on outcomes of the environmental assessment and detailed design. It is currently estimated that Baffinland would draw from the following aggregate sources in constructing the North Railway:

| Quarry No. | Railway Chainage (km) | Approximate Footprint Area (m ²) | Type of Material | Current Estimated Volume (m ³) |
|------------|-----------------------|--|------------------|--|
| Q1 | 2 | 200,000 | Granitic Gneiss | |
| Q5 | 4.5 | 560,000 | Granitic Gneiss | 1,110,000 |
| PQ2b | 28 | 80,000 | Limestone | 160,000 |
| PQ2a | 28.9 | 80,000 | Limestone | 160,000 |
| PQ4a | 41.6 | 90,000 | Limestone | 180,000 |
| PQ4b | 42.5 | 90,000 | Limestone | 180,000 |

Existing quarry

This is PQ1a,b,c,d combined into one quarry at km 4.5 of the rail alignment

| | | | | | |
|-------|-------|---------|-----------|---------|-----------------|
| PQ5a | 45.7 | 120,000 | Limestone | 240,000 | |
| PQ5b | 46.8 | 250,000 | Limestone | 500,000 | |
| PQ6a | 56.2 | 180,000 | Limestone | 360,000 | |
| PQ6b | 57.1 | 150,000 | Limestone | 300,000 | |
| PQ9a | 66 | 64,483 | Limestone | 225,000 | |
| PQ9b | 66 | 21,835 | Limestone | 75,000 | |
| PQ10a | 73.1 | 90,000 | Limestone | 180,000 | |
| PQ10b | 74.2 | 60,000 | Limestone | 120,000 | |
| PQ12a | 84.5 | 120,000 | Sandstone | 240,000 | |
| PQ12b | 84.5 | 60,000 | Sandstone | 120,000 | |
| PQ13 | 85.7 | 90,000 | Sandstone | 180,000 | |
| PQ14a | 96.7 | 40,000 | Sandstone | 80,000 | |
| PQ14b | 96 | 15,000 | Sandstone | 60,000 | |
| PQ15a | 101.5 | 40,000 | Diorite | 80,000 | |
| PQ15b | 102.3 | 22,500 | Diorite | 45,000 | |
| QMR2 | 107 | 20,833 | Diorite | | Existing quarry |
| Q42 | 109 | 62,500 | Diorite | 125,000 | |

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.

Schedule B:
Summary of Benefits

During the informal NIRB public hearing in Pond Inlet, Mr. Aglukark requested that Baffinland provide more details regarding the benefits that have been provided under the IIBA and other forums.

Table 1: Summary of Expenditures

| | |
|--|---------------|
| Community Based Expenditures by Baffinland (since 2013 - see further details in Table 2 below. These are expenditures outside of the financial commitments under the IIBA) | \$772,458 |
| Contracting – Inuit Firms and Joint Ventures (since 2013) | \$789,900,000 |
| Inuit Employee Payroll (since 2014 – note this total does not include wages paid to Inuit employed by Baffinland contractors) | \$31,040,428 |
| IIBA Direct Payments to QIA (since 2013) | \$35,423,000 |
| IIBA Compliance | \$8,531,708 |
| Note: In addition to these amounts, Baffinland has made annual payments to QIA under its Commercial Lease since 2014 | |

Further to the second line item, “Community Based Expenditures”, what follows provides a more detailed breakdown of expenditures by year and community.

Table 2: Community Based Expenditures 2013-2017

| | | |
|------|---|---------------------|
| 2013 | | \$40,827 |
| | Donations (Corporate and Government Affairs) | \$40,827 |
| 2014 | | \$240,932 |
| | Arctic Bay | \$3000 |
| | Clyde River | \$3000 |
| | Hall Beach | \$3000 |
| | Igloolik | \$11,000 |
| | Pond Inlet | \$5000 |
| | Donations (Corporate and Government Affairs) | \$41,887 |
| | Donations (Communications) | \$10,000 |
| | Rents for office space in 5 communities and Iqaluit | \$178,375 (approx.) |
| 2015 | | \$203,295 |
| | Rents for office space in 5 | \$140,082 |

| | | |
|--------------------|---|------------------|
| | communities and Iqaluit | (approx.) |
| | Donations (Corporate and Government Affairs) | \$63,213 |
| 2016 | | \$115,210 |
| | Rents for office space in 5 communities and Iqaluit | \$114,600 |
| | Donations (Corporate and Government Affairs) | \$610 |
| 2017 | | \$172,194 |
| | Rents for office space in 5 communities and Iqaluit | \$107,325 |
| | Pond Inlet Donations | \$20,844 |
| | Donations (Corporate and Government Affairs) | \$44,025 |
| GRAND TOTAL | | \$772,458 |

The following table provides recent examples of Baffinland's community sponsorship activities.

Table 3: Community Investment and Sponsorship 2017

| Community | Amount | Activity |
|--------------------------|--------------------|--|
| Pond Inlet | \$5000 | Community-led Christmas Hamper Program |
| | \$17,000 (approx.) | School Lunch Program 1 |
| | \$14,563.50 | School Lunch Program 2 [to commence in Q1 2018] |
| | \$200 | Door Prizes for Community Square Dance |
| Igloolik | \$500 | Support for Community Christmas Raffle |
| | \$17,000 | School Lunch Program [to commence in Q1 2018] |
| | \$5000 | Community-led Christmas Hamper Program |
| Hall Beach | \$500 | Support for community Christmas square dance and feast |
| | \$5000 | Community-led Christmas Hamper Program |
| Clyde River | \$500 | Support for community Christmas Activities |
| | \$5000 | Community-led Christmas Hamper Program |
| | \$10,000 | Emergency Family Travel |
| Arctic Bay | \$5000 | Community-led Christmas Hamper Program |
| Iqaluit | \$250 | Movie Days of Christmas |
| Nunavut | \$25,000 | Support for the Arctic Inspiration Prize |
| North Baffin Communities | \$7000 | Community Book Donations |

Table 4: Community Investment 2017

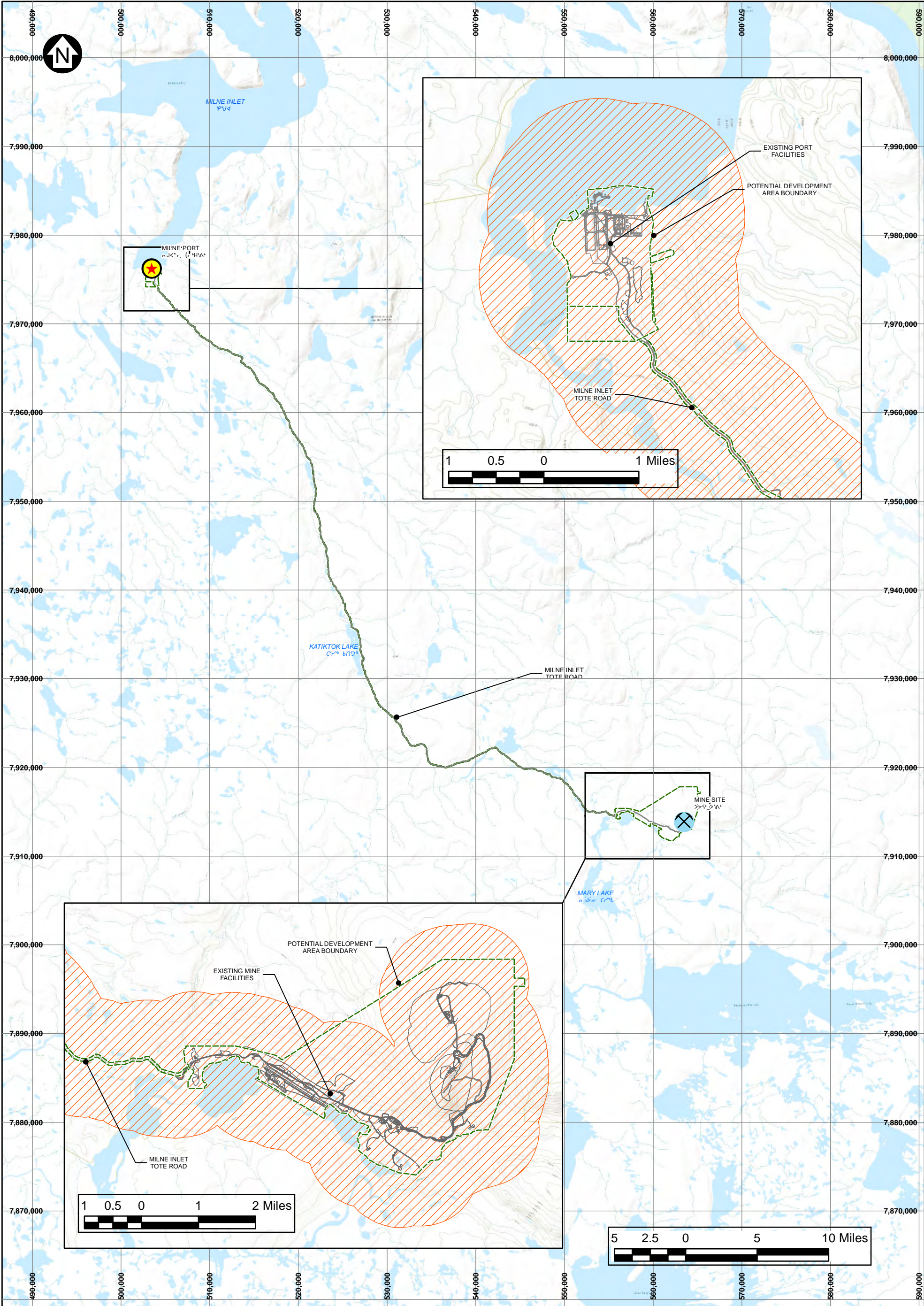
| Item | Amount |
|------|--------|
|------|--------|

| | |
|---|----------|
| Baffinland & QIA Community Liaison Officer Training | \$17,000 |
| Laptop Donations | \$28,200 |


The following table provides a more detailed breakdown of the IIBA compliance expenditures.


Table 5: IIBA Compliance Expenditures


| | | |
|---|---|----------------------------------|
| Annual Fund Contributions | Education & Training Fund – 2014, 2015 | \$2,000,000 |
| | Business Capacity & Start Up Fund (Annual Contribution) | \$250,000 + administration costs |
| | Wildlife Compensation – One Time Contribution | \$750,000 |
| | Community Wellness Fund – Annual Contribution | \$375,000 + administration costs |
| <ul style="list-style-type: none"> • Baffinland also contributes to a number of initiatives pursuant to the IIBA such as paid positions (IIBA Coordinator and IIBA Education and Training Coordinator), QIA external consultant costs to support participation in project monitoring and permitting, and various meeting costs (Joint Executive Committee and Joint Management Committee). • Additional expenditures are made on matters such as water compensation, translation, scholarships and bursaries and IIBA compliance. | | |





LEGEND:

MILNE PORT

MINE SITE

MILNE INLET TOTE ROAD

POTENTIAL DEVELOPMENT AREA (3855.4 HECTARES; 10.5% OF RESTRICTED ACTIVITY ZONE)

RESTRICTED ACTIVITY ZONE - 1 MILE FROM ALL FACILITIES INCLUDING THE TOTE ROAD (36785.9 HECTARES)


NOTES:

1. BASE MAP: ESRI ONLINE MAPPING.
2. COORDINATE GRID IS IN METRES. COORDINATE SYSTEM: NAD 1983 UTM ZONE 17N.
3. THIS FIGURE IS PRODUCED AT A NOMINAL SCALE OF 1:400,000 FOR 11x17 (TABLOID) PAPER. ACTUAL SCALE MAY DIFFER ACCORDING TO CHANGES IN PRINTER SETTINGS OR PRINTED PAPER SIZE.

BAFFINLAND IRON MINES CORPORATION

MARY RIVER PROJECT

RESTRICTED ACTIVITY ZONES



P/A NO.
NB102-181/39

REF NO.
NB17-00839

FIGURE 1

REV 0

| | | | | | |
|-----|---------|-------------------------|----------|-------|----------|
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| REV | DATE | DESCRIPTION | DESIGNED | DRAWN | REVIEWED |

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Qikiqtani Inuit Association
Igluvut Building, 2nd Floor
P.O. Box 1340
Iqaluit, NU, X0A 0H0

December 19, 2017

Attention: Levi Barnabas

Government of Nunavut
Department of Environment
P.O. Box 1000, Station 1360
Iqaluit, NU, X0A 0H0

Attention: Steve Pinksen, Assistant Deputy Minister

Re: Distribution of benefits from the Mary River Mine

We are writing to follow up on the recent Nunavut Planning Commission (the Commission) public hearings held in Pond Inlet on Baffinland's application to amend the North Baffin Regional Land Use Plan to allow rail as a mode of transportation within the existing transportation corridor.

During the public hearings, one of the key issues expressed by community members was that they were not satisfied with the distribution of benefits from the Mary River Mine. Upon questioning by Baffinland, those participants were supportive of Baffinland and the QIA engaging directly with the community to discuss the issue.

In addition to the commitments contained within the IIBA, the distribution of benefits is addressed in Condition 160 of Project Certificate No. 5, "*The Government of Nunavut and the Qikiqtani Inuit Association are encouraged to cooperate to ensure in a broad sense, that Project benefits are distributed across impacted communities and across various demographic groups within these communities in a manner that best offsets any Project-related impacts to infrastructure or services*".

Baffinland has provided significant benefits to Nunavut and to Inuit and is committed to working with the GN and QIA respecting the appropriate distribution of benefits. In addition to the monetary benefits, Baffinland continues to provide training, employment and business opportunities to the residents of the North Baffin as well as Nunavut in general. This was recognised by participants during the hearings and in written submissions to the Commission.

Baffinland is requesting a meeting to discuss the information shared by community members through the NPC process and consider potential strategies to work with the community to address their concerns.

Baffinland suggests the meeting occur in Iqaluit as soon as possible to address this critical issue. We look forward to discussing these important issues with you soon.

Thank you,

A handwritten signature in black ink, appearing to read 'T. Burlingame', with a stylized, flowing script.

Todd Burlingame
Vice President, Sustainable Development

CC

Ms. Daisy Koonoo, Mittimatalik Hunters and Trappers Organization
His Worship, Joshua Katsak, Mayor, Hamlet of Pond Inlet
Mr. Brian Aglukark, Director of Policy and Planning, Nunavut Planning Commission
Mr. Ryan Barry, Executive Director, Nunavut Impact Review Board



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Nunavunmi Parnaiyiit
Nunavut Planning Commission
Commission d'Aménagement du Nunavut

March 18, 2018

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

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

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

Dear Minister Bennett, Minister Sheutiapik, and President Kotierk,

RE: Recommendation to Amend the North Baffin Regional Land Use Plan to include a Railway Within a Transportation Corridor from Mary River Mine Site to Milne Inlet (Amendment #3)

The Nunavut Planning Commission has publically reviewed an Amendment Application from Baffinland Iron Mines Corporation (BIMC) to amend the North Baffin Regional Land Use Plan to modify an existing transportation corridor to include a railway from the Mary River Mine Site to Milne Inlet Port.

The Amendment Application has been considered in accordance with the provisions of the *Nunavut Planning and Project Assessment Act*, including:

- 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.*

...

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P.O. Box 2101
Cambridge Bay, NU X0B 0C0
ᐸ 867-983-4625
ᐸ 867-983-4626

P.O. Box 2101
Ikaluktutiak, NU X0B 0C0
ᐸ 867-983-4625
ᐸ 867-983-4626

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.*

...

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.*

The Commission has considered BIMC's Amendment Application, written submissions and oral comments provided during the public review, and recommends that a revised version of the proposed amendment be accepted. The recommended amendment is attached to this letter for your consideration, as well as a report of the public review that summarizes the information that was considered by the Commission and the analysis that led to this recommendation.

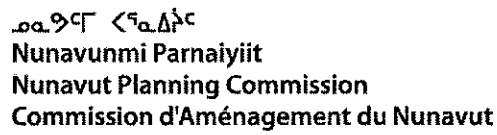
The Commission looks forward to hearing from you at your earliest convenience.

Sincerely,



Andrew Nakashuk
Chairperson, Nunavut Planning Commission

cc: Todd Burlingame, VP Sustainable Development, Baffinland Iron Mines Corporation
 P.J. Akeeagok, President, Qikiqtani Inuit Association
 The Honourable Paul Quassa, Premier of Nunavut
 Elizabeth Copland, Chairperson, Nunavut Impact Review Board
 Mary River Distribution List



NORTH BAFFIN REGIONAL LAND USE PLAN AMENDMENT APPLICATION –

| | |
|------------------------------------|--|
| 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. |

Relevant documents and correspondence are available online at:

1

| | |
|---|-----------|
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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. Ehloak, 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 NBRUP.
- 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 Igloodik 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 Igloodik. 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. 39

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, Igloodik: "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 3.511 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.

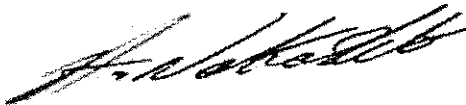
¹¹⁹ Nunavut Planning Commission, Conformity Determination by the Commissioners, Re: Mary River Project Phase 2, NWB File: 2AM MRY1325; DFO File: NU-07-HCAA-CA7-0050; NIRB File: 08MN053 (April 8, 2015), cited in QIA, Written Submissions (November 17, 2017) at ¶ 27 – 31.

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- ᐱᖃᑦᑎᓪᓴ ᐅᖃᕐᕋᐅᕐ ᐸᖃᑦᑎᓪᓴᐸᕐᕋᐅᕐᕋᐅᕐ NBRLUP-ᐱᕐ ᐱᖃᑦᑎᓪᓴᐸᕐᕋᐅᕐ ᐸᕈᕐᕋᐅᕐ ᐸᕐᑎᕐᐸᕐᕋᐅᕐ 2 ᐸᕐᑎᕐᐸᕐᕋᐅᕐᕋᐅᕐ ᐸᕐᕋᐅᕐ ᐱ....pdf
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 Support 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.

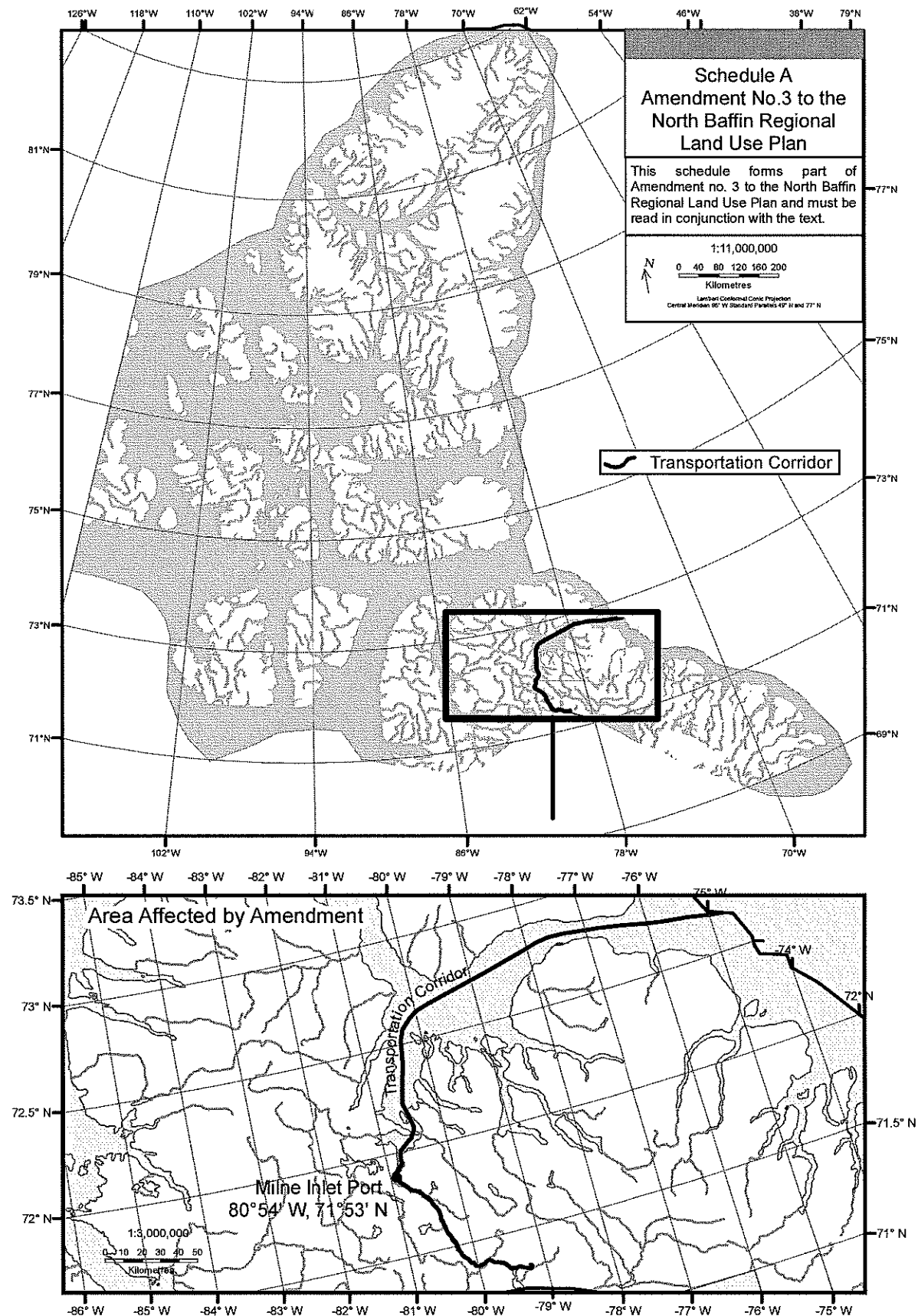
- Nothing in this Amendment will prevent or prohibit the public right of access for the purpose of transportation, as described in Schedule 21-2 of the Nunavut Agreement (NA), on the Inuit Owned Lands described in that Schedule.
- Nothing in this Amendment will prevent or prohibit the use of the lands 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.

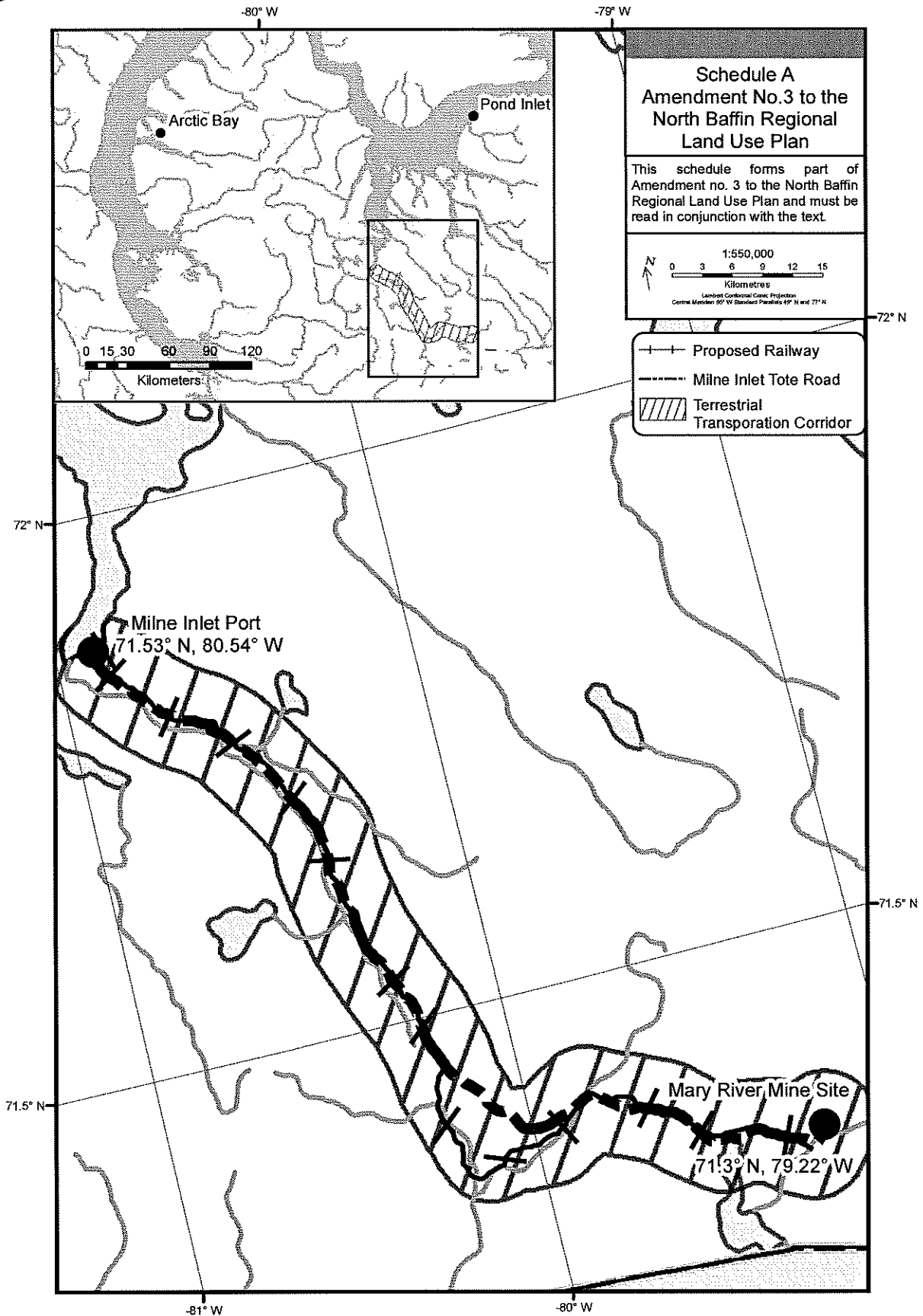
2.3 Implementation and Interpretation

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.



March 23, 2018

Andrew Nakashuk, Chairperson
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, NU X0B 0C0

The Honourable Joe Savikataaq
Minister of Environment
Government of Nunavut
P.O. Box 1000, Station 1500
Iqaluit, NU X0A 0H0

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

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

Dear Mr. Nakashuk, Minister Bennett, Minister Savikataaq and President Kotierk:

Re: Recommendation to Amend the North Baffin Regional Land Use Plan to include a Railway within a Transportation Corridor from Mary River Mine Site to Milne Inlet (Amendment No. 3)

We are writing in response to the letter from the Nunavut Planning Commission ("NPC") dated March 18, 2018 which references the NPC Report on Baffinland's Application to Amend the North Baffin Regional Land Use Plan ("NBRLUP"), to include the operation of a railway within the terrestrial corridor currently authorizing the Milne Inlet Tote Road as a transportation corridor under Appendix "Q" of the NBRLUP.

We are pleased that the NPC has recommended that the terrestrial corridor currently outlined in Appendix "Q" be amended to include the potential use of the corridor for a railway and related infrastructure.

However, we wish to clarify the purpose of paragraph 184 of the NPC's Report. As noted below, Appendix "P" was intended to reflect Amendment No. 1 to the NBRLUP – and that amendment was intended to authorize the first 35 kilometres of the railway from the Mary River Mine Site to Steensby Inlet (the "Steensby Railway"). The Mary River Project, including the Steensby Railway was approved by the Ministers after receiving the recommendations of the Nunavut Impact Review Board for the Mary River Project in September 2012, and the Project is authorized under the Mary River Project Certificate issued on December 28, 2012. Based on the 2012 NIRB Report and Recommendations, and the approvals of the Ministers, the Commission made a recommendation to amend the NBRLUP (by Amendment No. 1, Appendix "P") on December 9, 2013 to establish the first 35 kilometres of the Steensby railway corridor. Finalization of that Amendment has not yet been completed – but it remains of fundamental importance to Baffinland. A brief history of the process is included as Appendix 1.

As far as we are aware, the NPC has not provided the Ministers with a reconsideration of the proposed Amendment No. 1. That reconsideration remains outstanding.

We understand that, by paragraph 184 of the NPC Report and the proposal to move Appendix "Q" back to Appendix "P", the NPC did not intend to set aside the process for completing Amendment No. 1 for the Steensby railway corridor. We understand that the process for completing Amendment No. 1 remains outstanding and will still be finalized. We would be pleased if you would confirm this understanding, and also confirm that the reconsideration process for Amendment No. 1 will still be proceeding and will not be affected by finalization of Amendment No. 3.

Thank you.

A handwritten signature in black ink, appearing to read 'Tom Paddon', with a horizontal line extending to the left.

Tom Paddon
Chairman, Baffinland Iron Mines Corporation

Cc/ Sharon Ehaloak, NPC
Brian Aglukark, NPC

Ministre des Relations Couronne-Autochtones
et des Affaires du Nord



Minister of Crown-Indigenous Relations
and Northern Affairs

Ottawa, Canada K1A 0H4

APR 10 2018

Mr. Andrew Nakashuk, Chairperson
Nunavut Planning Commission
PO Box 1797
IQALUIT NU X0A 0H0

anakashuk@nunavut.ca

Dear Mr. Nakashuk:

Thank you for your letter of March 18, 2018, and the report on the public review of the amendment application to the North Baffin Regional Land Use Plan made by Baffinland Iron Mines Corporation on March 17, 2017. The Nunavut Planning Commission has recommended that a revised version of the proposed amendment, described in the report, be accepted.

Under subsection 62(1) of the *Nunavut Planning and Project Assessment Act*, the Minister of Environment of the Government of Nunavut, the designated Inuit organization (which is Nunavut Tunngavik Incorporated), and I must decide to accept or reject the proposed amendment.

I am pleased to inform you that I have accepted the Commission's recommended amendment. This amendment must be accepted jointly and would only be effective if my colleagues, Minister Savikataaq and President Kotierk, also approve it.

To address the concern raised by Baffinland Iron Mines Corporation in its letter of March 23, 2018, nothing in this decision affects the decision made on April 28, 2014, for the first proposed amendment to the Plan, the transportation corridor to Steensby Inlet. I still expect that the Nunavut Planning Commission will reconsider that amendment and may submit a revised version for approval.

.../2

Canada

I would like to thank the Nunavut Planning Commission for its work on this amendment application.

Sincerely,

A handwritten signature in cursive script, reading "Carolyn Bennett".

Hon. Carolyn Bennett, M.D., P.C., M.P.

c.c.: The Honourable Hunter Tootoo, M.P.
The Honourable Joe Savikataaq, M.L.A.
Ms. Aluki Kotierk
Mr. Tom Paddon
Mr. P.J. Akeeagok
Ms. Elizabeth Copland



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Minister of Environment
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Ministre de l'Environnement

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Chairperson
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Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, NU
X0B 0C0

April 30, 2018

Attention: Sharon Ehaloak, Executive Director

Nunavut Impact Review Board (NIRB)
P.O. Box 1360
Cambridge Bay, NU
X0B 0C0

Attention: Ryan Barry, Executive Director

Re: Submission of Mary River Modification Application – Production Increase, Fuel Storage and Milne Port Accommodations

In accordance with section 12.8.2 of the *Nunavut Agreement* Baffinland is submitting a request to the Nunavut Impact Review Board (NIRB) for a reconsideration of the current Project Certificate for the Approved Project, and amendment of Conditions 179(a) and 179(b) in the Project Certificate. The proposed amendment to the Project Certificate would enable Baffinland to:

- increase trucking of ore along the Tote Road from 4.2 Mtpa to 6 Mtpa; and
- increase shipping of ore via Milne Inlet from 4.2 Mtpa to 6 Mtpa.

Additionally, Baffinland is seeking regulatory approval to develop ancillary facilities required to support current operations and the proposed increase in production and transportation of ore including: the addition of a 15 ML diesel fuel tank to the existing fuel storage facility at Milne Port; and the construction of a new camp facility and associated camp pad and dedicated potable water and sewage treatment facilities at Milne Port. Additional fuel storage may also be required in 2019.

All activities and components associated with the 6 Mtpa Modification and the development of the camp facility will be located entirely within the Project Development Area for the Approved Project. The activities associated with this application will not result in any change to the footprint of direct physical disturbance nor the determinations of significance for any of the Valued Components that were previously assessed in the FEIS and FEIS Addendum for the Approved Project.

Baffinland remains open and interested in having ongoing dialogue with NIRB and other interested parties with respect to this application. Should you have any questions related to the submission of this application, please contact the undersigned or Ms. Megan Lord-Hoyle at megan.lord-hoyle@baffinland.com.

Thank you,

p.p. *Megan Lord-Hoyle*

William Napier
Owner Representative
Baffinland Iron Mines Corporation

CC:

Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs Canada (INAC)
Stephen Williamson Bathory, Qikiqtani Inuit Association (QIA)
Stephanie Autut, Nunavut Water Board (NWB)
Solomon Amuno, Nunavut Impact Review Board (NIRB)
Sarah Forte, Northern Affairs Canada (INAC)
Karen Kharatyan, Nunavut Water Board (NWB)
Assol Kubeisinove, Nunavut Water Board (NWB)

May 8, 2018

Andrew Nakashuk
Chairperson
Nunavut Planning Commission
P.O. Box 1797
IQALUIT NU X0A 0H0

Dear, Mr. Nakashuk

**Re: Recommendation to Amend the North Baffin Regional Land Use Plan
(Amendment#3)**

Thank you for your March 18, 2018 letter and report on the public review of the North Baffin Regional Land Use Plan (NBRLUP) Amendment Application (Amendment #3) submitted by Baffinland Iron Mines Corporation.

Nunavut Tunngavik Incorporated (NTI), on behalf of the Designated Inuit Organizations (DIO), would like to express our appreciation that the Nunavut Planning Commission (NPC) held a public review and considered the comments made by Inuit. It is acknowledged that the current amendment only concerns the proposed transportation corridor north to Milne Inlet (amendment #3). However, Inuit are concerned about any future, potential transportation corridor amendment (transportation corridor to Steensby Inlet) that would be in addition to the amended transportation corridor to Milne Inlet. NTI would be remiss not to reference these concerns in case a second transportation corridor is going to be reconsidered by NPC. Under subsection 62(1) of NUPPAA, on behalf of DIOs, I hereby accept the NPC's recommended approval to amend the NBRLUP (Amendment #3).

Sincerely,

$\Delta \supset P \text{ j } N^{\text{no}}$
Hilbertsteil

Aluki Kotierk
President

CC: Mr. P.J. Akeeagok, President, Qikiqtani Inuit Association
Mr. Stanley Anablak, President, Kitikmeot Inuit Association
Mr. David Ningeongan, President, Kivalliq Inuit Association

The Honourable Joe Savikataaq, Minister, Government of Nunavut, Dept. of Environment
The Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations and Northern Affairs
Canada
Mr. Joe Enook, MLA Tununiq
Mr. Joshua Katsak, Mayor Mittimatalik (Pond Inlet)
Mr. Tom Paddon, President, Baffinland Iron Mines Corporation



NPC File No: 148841

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1. A modification to the Early Revenue Phase of the Mary River Project to increase the amount of ore transported by truck north using the Milne Inlet tote road and shipped through Milne Port from 4.2 to 6 Million tonnes per year.
2. The installation of an additional 15 ML fuel storage tank at Milne Port.
3. The construction of a new 380-bed camp at the Milne Port.
4. The current modification is an interim measure in advance of approval of the Phase 2 proposal which would realize shipments of iron ore up to 12 Million tonnes per year. It is anticipated that trucking of ore on the tote road will stop if the northern railway is constructed (NPC file No 148420).
5. The proponent is not seeking any modifications to its authorized project to mine up to 18 Million Tonnes of ore per year to be transported south by rail to Steensby Inlet and shipped through Foxe Basin, which has not yet been carried out.
6. The current proposal is not seeking any modification to the currently approved shipping season (mid-July to mid-October) or shipping corridor. It is noted that on February 16, 2017, the proponent withdrew its application for a winter sealift (NPC file # 148423) due to increased community concerns regarding ice breaking.

A complete description of the project proposal reviewed by the NPC can be accessed online using the link below.

The Nunavut Planning Commission (NPC) has completed its review of the above noted project proposal. The NPC previously reviewed some of the works and activities associated with the current proposal, including mining and trucking iron ore north through the tote road as well the development of the Milne Port facilities (conformity determination was issued on April 30, 2008, August 12, 2011, February 8, 2016 and on January 26, 2017). These conformity determinations still apply. In addition, associated activities were previously reviewed by the Nunavut Impact Review Board (NIRB FILE No.: 08MN053 & 17UN012).

The NPC has determined that the above-noted project proposal is a significant modification to the project because it requires the reconsideration of terms and conditions in the project certificate No. 005, as well as an amendment to the Type A Water License 2AM-MRY 1325 . It conforms to the North Baffin Regional Land Use Plan (NBRLUP). The proponent has undertaken to comply with the applicable conformity requirements of Appendix C, H, and I of the NBRLUP.

The above-noted project proposal requires screening by the NIRB under section 12.4.3 of the Nunavut Agreement as amended because it is for a component or activity that was not part of the original or previously amended proposal and its inclusion is a significant modification of the project. By way of this letter, the NPC is forwarding the project proposal with this determination to the NIRB for screening. Project materials, including the applicable conformity requirements, are available at the following address:

<http://lupit.nunavut.ca/portal/project-dashboard.php?appid=148841&sessionid=>

The regulatory authorities to which this letter is addressed are responsible under the Nunavut Planning and Project Assessment Act (NUPPAA) to implement any of the applicable requirements by incorporating the requirements directly, or otherwise ensuring that they must be met, in the terms and conditions of any authorizations issued.

This conformity determination applies only to the above noted project proposal as submitted. Proponents may not carry out projects and regulatory authorities may not issue licenses, permits and other authorizations in respect of projects if a review by the NPC is required. Regulatory authorities may consult with the NPC to obtain recommendations on their duties to implement the existing land use plans prior to issuing licenses, permits and other authorizations under subsection 69(6) of the NUPPAA.

My office would be pleased to discuss how best to implement the applicable requirements and to review any draft authorizations that regulatory authorities wish to provide for that purpose. If you have any questions, please do not hesitate to contact me at (867) 979-3444.

Sincerely,

A handwritten signature in black ink, reading "Goump Djalogue". The signature is fluid and cursive, with the first name "Goump" and last name "Djalogue" clearly distinguishable.

Goump Djalogue, MCIP | RPP
Senior Planner,
Nunavut Planning Commission



WITHOUT PREJUDICE

August 23, 2018

Hannah Uniuqsaraq
A/Chief Executive Officer
Nunavut Tunngavik Inc.

Pauloosie Suvega
Deputy Minister, Department of Environment
Government of Nunavut

David Rochette
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Re: Amendment No. 1 North Baffin Regional Land Use Plan – Railway to Steensby Inlet

I am writing on a without prejudice basis.

As you know, in 2014 the Nunavut Planning Commission (**NPC**) considered and recommended two amendments to the North Baffin Regional Land Use Plan (**NBRLUP**). Amendment No. 1 would have added a transportation corridor to the NBRLUP to accommodate a railway from the Mary River mine site to Steensby Inlet as proposed by the Baffinland Iron Mines Corporation (**BIMC**). Both the Government of Nunavut and Government of Canada rejected Amendment No. 1 in written reasons provided in May and June of 2014, respectively. Following the approval of Amendment No. 2 to the NBRLUP, in late October 2014 BIMC submitted to the NPC the "Mary River Project Phase 2", which received a negative conformity determination from the NPC and then a ministerial exemption in mid-2015; however, BIMC later made further significant modifications to the proposal that resulted in a new application to amend the NBRLUP to permit a railway from the Mary River Mine Site north to Milne Inlet, and Amendment No. 3 was recently completed on May 8, 2018. BIMC recently asked the NPC to complete the Amendment No. 1 process. As provided in section 11.6.4 of the Nunavut Agreement, and section 62 of the *Nunavut Planning and Project Assessment Act (NuPPAA)* the NPC intends to complete and resubmit Amendment No. 1 for consideration by the signatories, and would appreciate your input on the process to complete that Amendment.

I note that several important events have occurred since Amendment No. 1 was rejected, notably:

- *NuPPAA* came into force and effect, including transitional provisions,
- The NPC created new internal procedures regarding amending land use plans,
- The NPC has reviewed further BIMC projects relating to the Mary River Project,
- The former Minister of Indigenous and Northern Affairs gave BIMC an exemption following a negative conformity determination of a project by the NPC,
- BIMC made a significant modification to the exempted project meaning the project returned to the NPC which conducted a public review resulting in Amendment No. 3 to the NBRLUP,
- In Amendment No. 3, the wording of the amendment was publicly reviewed and considered by the Commissioners as required by the NPC's internal procedures referenced above, and
- Pursuant to the *NuPPAA*, NTI was a signatory to Amendment No. 3 and in its approval letter dated May 8, 2018, NTI specifically noted that:

... Inuit are concerned about any future, potential transportation corridor amendment (transportation corridor to Steensby Inlet) that would be in addition to the amended transportation corridor to Milne Inlet. NTI would be remiss not to reference these concerns in case a second transportation corridor is going to be reconsidered by NPC.

Although BIMC received a conformity determination for the Mary River Project in 2008 and a project certificate from the Nunavut Impact Review Board (**NIRB**) in December 2012, and has commenced operations at the Mary River Mine and made significant modifications to that project, to date BIMC has not commenced construction of the railway South, or port facilities at Steensby Inlet.

For discussion purposes only, I present two potential options for the NPC to complete its work on Amendment No. 1 as requested by BIMC:

1. Recognizing that the NPC and NIRB publicly reviewed the proposed railway to Steensby together as part of the NIRB's review process and the NIRB issued a project certificate in December 2012, NPC staff could use the wording describing the railway contained in Amendment No. 3 already approved by the Government of Nunavut, Government of Canada and NTI to update Amendment No. 1 and put that wording before the Commissioners to approve and submit to you without further public review.
2. In light of feedback received from the Government of Nunavut and Government of Canada in 2014 and concerns raised in NTI's letter of May 8, 2018, pursuant to section 11.6.4 of the Nunavut Agreement (and section 62 of the *NuPPAA* if it should be found to apply), the NPC could use the wording describing the railway contained in Amendment No. 3 already approved by the Government of Nunavut, Government of Canada and NTI to recommence its public review of the proposed amendment to accommodate BIMC's proposed railway south to Steensby.

Please advise if you have any additional process options the NPC might consider. Of course the NPC values your input so that all parties can efficiently update this process. Moving forward, the NPC will consider all inputs as it

determines its process on BIMC's Amendment request.

The Commissioners will be meeting in late September 2018 to consider next steps in respect of BIMC's request to revisit Amendment No. 1. I appreciate your reply by noon eastern on Friday, September 14, 2018.

Respectfully,

A handwritten signature in black ink, appearing to read 'S Ehaloak'.

Sharon Ehaloak
Executive Director
Nunavut Planning Commission

cc. Steve Pinksen, Assistant Deputy Minister, Department of Environment, Government of Nunavut
Spencer Dewar, Director, Resource Management, Crown-Indigenous Relations and Northern Affairs
Canada
William Napier, Owner Representative, Baffinland
Ryan Barry, Executive Director, Nunavut Impact Review Board