



NUNAVUT PLANNING COMMISSION

NORTH BAFFIN REGIONAL LAND USE PLAN AMENDMENT APPLICATION

REPORT ON PUBLIC REVIEW

APPLICANT	Baffinland Iron Mines Corporation (BIMC)
PROJECT:	Reconsideration of Amendment No. 1
FILE NO(S):	Amendment No. 1
PLANNING REGION(S):	Qikiqtani (North Baffin)
APPLICABLE LAND USE PLAN(S)	North Baffin Regional Land Use Plan (NBRLUP)
DATE OF REPORT:	March 14, 2023
SUMMARY OF REPORT:	The Commission recommends the revised amendment, attached as Schedule 1 be approved for inclusion in the NBRLUP.

NOTE

Relevant documents and correspondence are available online at:

<https://lupit.nunavut.ca/portal/registry.php?public=docs&q=11&c=1024>

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EXECUTIVE SUMMARY

- The North Baffin Regional Land Use Plan requires an amendment to authorize the development of transportation corridors and includes specific information requirements and a public review process.
- BIMC was previously approved by regulatory authorities under the Mary River Project to mine up to 18 Million Tonnes of ore per year (Mtpa) to be transported by rail south to Steensby Inlet and shipped through Foxe Basin.
- Amendment No. 1 to the NBRLUP recommended by the Commission to authorize the development of a portion of the South Railway to Steensby Inlet within the planning region was rejected by the ministers with written reasons in 2014, and the Commission is now reconsidering revised wording for the proposed amendment.
- The NBRLUP was previously amended to include intensified use of the Milne Inlet Tote Road (Amendment No. 2), as well as a railway (Amendment No. 3).
- Some participants had argued that in order to reconsider Amendment No. 1, an updated Cumulative Effects Assessment from BIMC was required to reflect changes to the project since 2014, including a railway north to Milne Inlet, and the Commission requested updated materials.
- In 2022 BIMC's Phase 2 proposal, including a railway north to Milne Inlet was rejected.
- BIMC argued that the cumulative effects of a railway south and a Tote Road north were previously considered as part of Amendment No. 2.
- The Commission now finds the information requirements of the North Baffin Regional Land Use Plan have been met and recommends that the revised proposed Amendment No. 1, attached as Schedule 1 to this report, be accepted in whole.

BACKGROUND

Due to the complexity of the file, a brief history of the Mary River Project and relevant correspondence is provided below.

1. On March 14, 2008, BIMC submitted the Mary River Project Development Proposal to the NPC, which included the development of a transportation corridor including a South railroad to Steensby Island and shipping through Foxe Basin.
2. On April 30, 2008, after an initial review of the project proposal, NPC informed the proponent and the parties of the need for a Plan Amendment to the NBRULP.
3. On December 9, 2013, after a joint NIRB/NPC public review that included meetings in all North Baffin communities, the Commission submitted a proposed Amendment No 1, to the Ministers for approval.
4. In the spring of 2014, the Government of Canada and the GN rejected the proposed amendment wording with written reasons that included the following:
 - The proposed amendment did not provide for Multi-use corridor but rather limited it to a single user or single use, and
 - The proposed amendment did not specify the width of the transportation corridor.
5. While the Amendment No. 1 process was still underway, on August 9, 2013, BIMC submitted another application for Amendment No. 2 to NBRULP, to develop a Transportation Corridor north to Milne Inlet comprising a Tote Road and open water shipping through Milne Port.
6. On April 2, 2014, after a public review, the Commission recommended Amendment No 2 to the ministers for approval, which came into effect on April 28, 2014.
7. On March 17, 2017, BIMC submitted an application for Amendment No. 3 to the NPC after they decided that a railway was needed to transport ore north to Milne Inlet.
8. The NPC conducted a written review and then in November 2017, an in-person Public Hearing in Pond Inlet on the proposed Amendment No. 3 and on March 18, 2018, the Commission recommended a revised Amendment No. 3 for approval that included a limited multi-use corridor with a defined width.
9. Amendment No. 3 came into effect on May 8, 2018, upon approval of the Government of Canada, the GN and NTI.
10. While Amendment No. 3 was under review by the approving parties, BIMC informed the Commission on March 23, 2018, that it still wanted the Amendment No 1 process to be completed and on August 23, 2018 the NPC wrote to the approval parties seeking advice

on the process to reconsider Amendment No. 1. In response, NTI raised concerns in particular about the consideration of cumulative effects of a railway going both north and south from the mine site, and recommended a “full public review of the amendment” take place.

11. On September 28, 2018, the Commission announced the recommencement of the Amendment No 1 process, including the need for a public review, and requested BIMC “provide updates on the materials filed in support of the amendment application to reflect changes in the Mary River Project since the original materials were submitted, including consideration of a second railway North to Mile Inlet”.
12. On January 18, 2019, BIMC provided a revised proposed amendment and the following documents to NPC for consideration:
 - BIMC Response to NPC Request of 28-09-18 (cover letter)
 - Schedule 1 - Chronology and history of the Mary River Project and NBRLUP Amendments
 - Schedule 2 - Proposed Amendment No. 1 to NBRLUP - November 2018
 - Schedule 3 - Index of Documents Referred to in Schedule 1
 - Package 01 2008-03-14 to 2012-05-30
 - Package 02 2012-07-16
 - Package 03 2012-09-14 to 2013-04-13
 - Package 04 2013-06 (Vol 5)
 - Package 05 2013-06 (Vol 6)
 - Package 06 2013-06 (Vol 9) to 2013-07-30
 - Package 07 2013-08-02 to 2014-04-28 (2nd document)
 - Package 08 2018-04-28 (3rd document) to 2018-08-23
 - Package 09 2018-08-31 to 2018-10-30
13. On March 22, 2019, the Commission requested comments on the proposed revised Amendment No. 1 as well as the need for an in-person public hearing.
14. On May 10, 2019, the Commission received comments from the Government of Canada, the Government of Nunavut, Nunavut Tunngavik Incorporated, and the Qikiqtani Inuit Association.
15. On May 24, 2019 BIMC responded to the written comments.
16. On July 26, 2019, the Commission adjourned the public review of Amendment No. 1 pending the submission of a current Cumulative Effects Assessment by BIMC.

17. On November 16, 2022 the Minister of Northern Affairs accepted the May 13, 2022 recommendation of the NIRB that the Phase 2 Proposal should not proceed.
18. On November 24, 2022 BIMC provided further revised wording to Amendment No. 1 and noted that “At this time, Baffinland is no longer actively pursuing a northern rail operation and the Phase 2 reconsideration process has completed... that issue is now closed and the NPC should be able to issue the amendment expeditiously and without further process.”
19. On December 9, 2022, the Commission requested comments on BIMC’s November 24, 2022 response and revised wording of the proposed Amendment No. 1.
20. On January 16, 2023, the Commission received comments from Nunavut Tunngavik Incorporated/Qikiqtani Inuit Association, Government of Canada, and World Wildlife Fund-Canada,
21. On January 23, 2023, the Commission received a response from BIMC to the comments received.

APPLICABLE LAWS

22. 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**) 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.

23. 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;

(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.

24. Section 11.3.2 of the Nunavut Agreement says that the purpose of a land use plan “shall be to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, taking into account the interests of all Canadians, and to protect, and where necessary, to restore the environmental integrity of the Nunavut Settlement Area.”

25. The NPC has three major responsibilities listed under section 11.4.1 of the Nunavut Agreement:

11.4.1 A Nunavut Planning Commission (NPC) shall be established with the major responsibilities to:

- (a) establish broad planning policies, objectives and goals for the Nunavut Settlement Area in conjunction with Government;
- (b) develop, consistent with other provisions of this Article, land use plans that guide and direct resource use and development in the Nunavut Settlement Area; and
- (c) generally, fulfill the objectives of the Agreement in the manner described, and in accordance with the general principles mentioned in Section 11.2.1, as well as such additional functions as may be agreed upon from time to time by Government and the DIO.

26. The NPC 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 Indian Affairs and Northern Development and the Territorial Government Minister responsible for Renewable Resources to amend land use plans under Part 6 of Article 11 of the Nunavut Agreement.

27. The *Nunavut Planning and Project Assessment Act (NuPPAA)* continues the NPC as it was established under the Nunavut Agreement. Similar to section 11.4.1 of the Nunavut Agreement, the *NuPPAA* reads in various sections:

41. The Commission is responsible for the establishment, in conjunction with the Government of Canada or the Government of Nunavut, or both, taking into account their respective jurisdictions, of broad planning policies, priorities and objectives for the designated area regarding the conservation, development, management and use of land.

...

48 (1) A land use plan must provide for the conservation and use of land and guide and direct resource use and development and must, in particular, provide for a strategy regarding the implementation of the plan and take into account

- (a) the broad planning policies, priorities and objectives established for the designated area;
- (b) the specific planning objectives and planning variables identified for any applicable planning region;

- (c) the factors referred to in section 11.3.1 of the Agreement; and
- (d) Inuit objectives for Inuit owned lands.

...

15. The Commission must exercise its powers and perform its duties and functions with a view to fulfilling the objectives of the Agreement in relation to land use planning in accordance with the principles referred to in section 11.2.1 of the Agreement.

28. 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.

(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.

APPLICABLE LAND USE PLANS

29. Where the NPC receives a project proposal that proposes to develop a transportation and/or communications corridor that pertains to the North Baffin Planning Region, the NBRLUP requires a detailed application to amend the relevant land use plan, and a public review of a 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]

30. 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.

31. 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.

32. The NBRLUP requires the NIRB, or a federal environmental assessment panel, be involved in the plan amendment (or coordinated activities).

33. At the conclusion of that public review, the NPC retains discretion whether to recommend a proposed amendment to the ministers. Both section 3.5.11 and 3.5.12 of the NBRLUP are marked as “conformity requirements” which must be completed before a final conformity determination may be made.

34. Under section 61 and 62 of the *NuPPAA*, once NPC 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. NPC 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 NPC 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 RULES, INTERNAL PROCEDURES, AND BROAD PLANNING POLICIES, OBJECTIVES AND GOALS

35. In accordance with the Nunavut Agreement and the *NuPPAA*, the NPC's *Rules for Public Proceedings (RPP)* enacted by the Commissioners broadly define the parties to the public review of an Amendment Application, provides various procedures for public reviews and hearings, and sets out the factors which the NPC's delegates must consider in addition to those set out in Appendices J and K of the NBRLUP in conducting public reviews of Amendment Applications for transportation corridors.

36. Rule 6 of the *RPP* provides:

RULE 6. GOVERNING PRINCIPLES

(1) In all Proceedings, as well as in issuing directions on procedure, the Commission shall be principally guided by the general principles set forth in section 11.2.1 of the Agreement.

(2) The Commission shall ensure that all activities undertaken are conducted in a manner that encourages Inuit participation and are respectful of Inuit culture and practices.

37. The Commission also has an Internal Procedure on Plan Amendments. Section 4.5 of the Internal Procedure on Plan Amendments states:

"The Executive Director will prepare a written report for the Commission that will include:

(a) the proposed amendment;

(b) an initial analysis of the proposed amendment based on the intent of the land use plan and any guidelines contained in the plan and the NA."

38. Section 4.7 of the Internal Procedure on Plan Amendments is set up to work under *NuPPAA*. It states:

"As soon as practicable after the Commission meeting where the proposed amendment is considered, the applicant will be advised in writing of the decision by the Commissioners that:

- (a) The proposed amendment is not consistent with approved planning policies and objectives, or the purpose of the land use plan, and the Commission has recommended that it be rejected in whole or in part;
- (b) The proposed amendment is appropriate, no public review is required, and the Commission has recommended that it be accepted; or
- (c) The proposed amendment requires a public review before a recommendation can be made.”

39. The wording of section 3.5.12 the NBRLUP suggests a public review must be held notwithstanding sections 4.7 a) and 4.7 b) of the Internal Procedure on Plan Amendments.

40. Sections 5.1 and 5.2 of the Internal Procedure on Plan Amendments state:

- 5.1 If the Commission determines under 4.7(c) that a public review is required, it will be undertaken in accordance with the NPC’s approved workplan. The public review will be conducted in accordance with the Rules of Procedure for Public Hearings and Public Reviews in a manner considered appropriate by NPC [Commissioners] to derive the most meaningful insights and input from the public.
- 5.2 A Public Review provides an opportunity for public input; it does not necessarily imply a public meeting or hearing. The need for a public meeting will depend on the significance of the amendment and the degree of public concern / interest the Commission anticipates the proposal may generate. If the Commission believes the level of public concern/ interest is not significant, the public review may be conducted by providing the opportunity for written submissions or presentation at a regular Commission meeting.

41. The *RPP* provides the following requirements for notices in respect of a public review of an Amendment Application:

RULE 7. NOTICES & REMEDIES

- (1) The Commission shall make reasonable best efforts to notify Persons potentially interested or affected by the Proceeding as possible in Inuktitut, English, and French and may use various methods to distribute Notices to Public to potentially affected Persons having regard for the nature of the Proceeding.
- (2) The Commission may proceed in the absence of any Entity with Right to Standing or Person who does not become a registered Participant or who otherwise fails to participate in the Proceeding or any process step therein.

(3) Failure of the Commission to give adequate notice, whether Notice to Public or Notice to Participants, does not invalidate a Proceeding if the Person entitled to notice consents, there is no actual prejudice arising out of the failure, or any actual prejudice can be offset by adjourning the Proceeding or extending time limits or through some other means.

(4) The Commission may, in its discretion, issue Notices to Public and Notices to Participants in other languages and dialects where appropriate, and may amend Notices to Public and Notices to Participants by issuing additional notices, which may include time extensions.

RULE 19. PUBLIC REVIEW PERIOD

(1) Where the Commission in its discretion determines that a Public Review of an Amendment Application made, or a Minor Variance is appropriate, the Commission shall:

- a. post a written Notice to Public of Public Review and Documents relevant to the Public Review in its public registry;
- b. publish a Notice to Public of Public Review,; and
- c. forward such Notice to Public to Entity with Right to Standing, and place such notice in the public registry.

(2) A Notice to Public of Public Review shall generally contain:

- a. the purpose of the Public Review;
- b. an invitation to register as a Participant by a certain date, or to provide comments as a member of the public;
- c. timelines for Information Requests, for filing arguments, Documents, and Evidence and for responses by Proponents or Amendment Applicants to these items as applicable;
- d. the date of the closing of the record, which must not be less than 30 days after the date of the Notice to Public; and
- e. how to obtain more information and the Commission's contact information.

(3) The Public Review period begins on the date the Commission elects in its sole discretion to hold a Public Review and ends on a date specified by the Commission in a Notice to Public.

42. Section 11.2.1 of the Nunavut Agreement is the list of principles that guide the development of the NPC's BPPOG, and Rule 7.3(c) of the RPHPR refers to the "planning policies, priorities and objectives" contained in the NPC's BPPOG, cited above.

43. For example, the BPPOG says under Goal 2 "Protecting and Sustaining the Environment":

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 addresses environmental, economic, Inuit cultural and social concerns regarding transportation corridors, including all-season roads and marine shipping routes, and ship to shore activities.	C1 ensures environmental, economic, Inuit cultural and social concerns are considered in decisions regarding transportation. ...

44. BPPOG Goal 4, "Building Healthy Communities" also provides, for example:

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:
A ensures the social, cultural, economic and environmental endeavours of the human community are central to land use planning and implementation.	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.

45. Under Goal 5 "Encouraging Sustainable Economic Development" the BPPOG reads:

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.1 assesses the economic potential of land uses for consideration in planning decisions. C.2

C.2 recognizes the economic goals, opportunities and needs of communities specifically, and the Nunavut Settlement Area generally.	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.

46. These are only a few example of relevant portions of the BPPOG.

ISSUES TO DETERMINE

47. This report addresses the reconsideration of Amendment No. 1 to the NBRLUP that was recommended by the Commission in 2013 and rejected with written reasons by the Government of Canada and Government of Nunavut in 2014.
48. The Commission is only reconsidering Baffinland's application to amend the NBRLUP to include a portion of a corridor within the North Baffin planning region, and is not performing a conformity determination on any component of Baffinland's Mary River 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 continuing a public review of the proposed Amendment No. 1 Application to make a recommendation to both branches of government and the Designated Inuit Organization to make a final decision on amending the NBRLUP.
49. To the extent possible the Commission has attempted to address all outstanding major points in issue in this report. At this time, the issues to consider regarding proposed Amendment No. 1 are:
 - a. Have Appendices J & K of the NBRLUP been met, including the requirement for a cumulative effects assessment and public review?
 - b. Is the proposed wording appropriate?

SUMMARY OF FACTS & ANALYSIS BY ISSUE

50. 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. All documents that

were considered are included in the Commission's public registry website given on page 1 of this report above.

Issue "a." Have Appendices J & K of the NBRLUP been met, including the requirement for a cumulative effects assessment and public review?

FACTS

51. The original Mary River Project, including the South Railway, was publically reviewed by the NPC and NIRB and regulatory approval was previously granted for the project and the NPC previously recommended that a corridor for the South Railway be included in the NBRLUP.
52. In the spring of 2014, the Government of Canada and the GN rejected the proposed amendment wording with written reasons that included the following:
 - The proposed amendment did not provide for Multi-use corridor but rather limited it to a single user or single use, and
 - The proposed amendment did not specify the width of the transportation corridor.
53. On April 2, 2014, after a public review, the Commission recommended Amendment No. 2 to the ministers for approval, which came into effect on April 28, 2014 and established a Transportation Corridor north to Milne Inlet comprising a Tote Road and open water shipping through Milne Port.
54. On September 28, 2018, after consulting with the approval parties, Commission announced the recommencement of the Amendment No 1 process, including the need for a public review, and requested BIMC "provide updates on the materials filed in support of the amendment application to reflect changes in the Mary River Project since the original materials were submitted, including consideration of a second railway North to Mile Inlet".
55. On January 18, 2019, BIMC provided updated materials to NPC for consideration and argued that the Mary River Project "was thoroughly and publicly reviewed by the NPC and NIRB, culminating in project approval and a recommendation by the NPC that the NBRLUP be amended to include the South Railway" and "The issue of cumulative effects has been expressly addressed at each stage of the development of the Mary River Project from the original project approval in 2012 through the ERP approval in May 2014, as well as the current NIRB reconsideration relating to Phase 2."
56. On March 22, 2019, the Commission requested comments on the proposed revised Amendment No. 1 as well as the need for an in-person public hearing.
57. On May 10, 2019, the Commission received comments from:
 - a. The Government of Canada, who noted that "Recognizing the work completed by the Commission in its original review of Amendment No. 1, its reviews of

Amendments No. 2 and 3, and the work of the Nunavut Impact Review Board in its assessment of the original Mary River Mine project and the Early Revenue Phase, the Government of Canada considers the current application has met the requirements of Appendices J and K of the NBRLUP.

...

"The Government of Canada is of the opinion that a further public hearing is not necessary, given the small scope of the proposed revision to the originally proposed plan amendment, and the detailed review that the original amendment received. The original amendment was subject to a public review and hearings as part of the original Mary River Project review, jointly conducted by the Commission and the Nunavut Impact Review Board which led to the Commission's recommendation to approve Amendment No. 1 on December 9, 2013."

- b. the Government of Nunavut, who noted that "BIMC provided an adequate level of information to satisfy the information requirements of Appendices J and K of the NBRLUP during the original Amendment No. 1 application. This is evidenced by the NPC's December 2013 submission of Amendment No. 1 to approval authorities. NPC confirmed that Appendixes J and K had been satisfied in a May 17, 2012 letter. The NPC also concluded that sections 3.5.11 and 3.5.12 of the NBRLUP had been satisfied in a May 30, 2012 letter. The GN believes that these prior NPC determinations remain valid.

"Acknowledging the NPC's public review of the latest iteration of Amendment No. 1 is ongoing, the GN has no current concerns regarding the proposal that BIMC has put forward.

...

"Consistent with its September 20, 2018 letter to NPC, the GN finds that NPC has fulfilled its obligation under section 59(2) of NuPPAA and section 5 of NPC's Internal Procedure: Amendments to Land Use Plans to conduct a public review of Amendment No. 1 to the NBRLUP. The public hearing held in July 2012 satisfies these provisions."

- c. Nunavut Tunngavik Incorporated, who were "of the view that not enough information has been provided by Baffinland Iron Mines Corporation (BIMC) to assess cumulative effects of Amendment 1... or to meet the requirements of sections 3.5.11 or 3.5.12 of the NBRLUP" and "The Phase 2 cumulative effects assessment is relevant to the Amendment 1 review process and BIMC should be requested to submit the Phase 2 cumulative effects assessment before the public review can be completed and a final determination on Amendment 1 is made."

- d. the Qikiqtani Inuit Association noted concerns regarding the consideration of cumulative effects as well as community engagement and suggested that “It may be a reasonable option for NPC to consider postponing consideration of the Proposed Amendment until the completion of the NIRB review of Phase 2.

58. On May 24, 2019 BIMC responded to the written comments, noting that

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

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

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

59. On July 26, 2019, the Commission adjourned the public review of Amendment No. 1 pending the submission of a current Cumulative Effects Assessment by BIMC.

60. On November 16, 2022, the Minister of Northern Affairs accepted the May 13, 2022 recommendation of the NIRB that the Phase 2 Proposal should not proceed.

61. On November 24, 2022, BIMC provided further revised wording to Amendment No. 1 and requested that the Commission complete the process as soon as possible, noting that “The NPC has already consulted with all parties respecting the wording of the Steensby Amendment and there are no outstanding issues in that regard. The only remaining concern was the issue of potential cumulative effects between the approved southern railway and the proposed northern railway (included in the Phase 2 proposal).” Given the November 16, 2022 rejection of the Phase 2 proposal, BIMC noted that “At this time, Baffinland is no longer

actively pursuing a northern rail operation and the Phase 2 reconsideration process has completed... that issue is now closed and the NPC should be able to issue the amendment expeditiously and without further process.”

62. On December 9, 2022, the Commission requested comments on BIMC’s November 24, 2022 response and revised wording of the proposed Amendment No. 1.

63. On January 16, 2023, the Commission received comments from:

- a. Nunavut Tunngavik Incorporated/Qikiqtani Inuit Association, who noted that “BIMC has not submitted an updated CEA and argues that it is no longer needed as the Mary River Phase 2 Development Proposal that included a northern railway to Milne Inlet is not proceeding, and the potential cumulative effects of a southern and northern railway are no longer a concern. NTI and QIA view this to be an overly narrow interpretation of what is required to address the cumulative effects requirements set out in the NBRLUP....The CEA must reflect the further approvals to the Mary River Mine since 2012 that have changed the original intended use and impacts of Milne Inlet Tote Road, which was initially approved to primarily transport the supplies and equipment required for the construction of Mine Site and the northern portion of the southern railway.”
- b. Government of Canada, who indicated continuing support for amending the NBRLUP to include the corridor from Mary River to Steensby Inlet and noted that “outstanding cumulative effects of the Project as a whole, including in combination with any future proposed modifications, should be addressed as part of the NIRB’s assessment of future iterations of the project proposed by Baffinland, rather than within the process for NBRLUP Amendment No. 1.
- c. World Wildlife Fund-Canada, who noted that “Baffinland’s amendment application should not yet be approved, and the North Baffin Regional Land Use Plan (NBRLUP) should not yet be amended to include a new transportation corridor until proven mitigation measures are put in place to ensure wildlife protection.”

64. On January 23, 2023 BIMC responded to written comments and attached previous Cumulative Effects Assessments from 2012 and 2013 that were previously considered during the Amendment No. 1 and No.2 processes and include the use of the southern railway to Steensby Inlet as well as intensified use of the Milne Inlet Tote Road.

ANALYSIS

65. As BIMC noted in its January 23, 2023 response to written submissions, “NPC confirmed during the review process for both Amendment No. 1 and No. 2 that the CEA provided by Baffinland met the amendment information requirements of the NBRLUP:

“Amendment No. 1: On May 17, 2012, NPC wrote to Baffinland that: *‘It has been determined by the NPC that adequate information has been provided by BIMC and parties to meet the requirements of the NBRLUP’s Appendix J & K, and as such no further information is required. The NPC notes that this decision is consistent with the assessment by the NIRB on this point.’* On May 30, 2012, NPC wrote to NIRB and confirmed that: *“After an absence, presence review of the Baffinland Iron Mines Corporation (BIMC) documents related to the Mary River project, the NPC observes that the provisions of section 3.5.11 and 3.5.12 related to BIMC Mary River Project concerning the Joint Review has been satisfied.’*

“Amendment No. 2: The NPC issued reasons for decision on April 2, 2014 which confirmed *‘...the NPC has reviewed the FEIS and ERP Addendum including “Appendix B-4 Concordance with EIS Guidelines (Appendices J and K of the North Baffin Regional Land Use Plan) and the Summary of Information and concludes that the Amendment Application has met the informational requirements of Appendix J” (see page 34) and “The NPC has also considered whether the guidelines in Appendix K have been met... The Amendment Application does meet those guidelines... Upon consideration of the evidence, submissions by the participants to the NPC’s review and parties to the NIRB’s review, and the NIRB’s Final Report containing the NIRB’s letter and recommendations to the NPC dated February 24, 2014, the NPC concludes that Appendix K has been met. On this basis, the NPC has decided that the guidelines in Appendices J and K have been met...’*(see pages 37-40).”

66. After consideration of the rejection of the Phase 2 proposal on November 16, 2022, and the BIMC response to written comments on January 23, 2023 demonstrating the consideration of the cumulative effects of intensified use of the Milne Inlet Tote Road in combination with the southern railway to Steensby Inlet, the NPC finds the cumulative effects concerns identified as part of the Amendment No. 1 process adequately addressed.
67. The Commission finds the January 16, 2023 comments from WWF-Canada to be beyond the scope of matters currently being considered.
68. The Commission finds the combination of the public review held as part of the initial consideration of the proposed Amendment No. 1 and the public process undertaken to reconsider the proposed amendment between 2019 and 2023 to be adequate to satisfy its requirements to publicly review proposed amendments under the NBRLUP and its internal procedures.
69. Based on the above, as well as the supportive comments from the Government of Canada and the Government of Nunavut, the Commission considers Appendices J & K to have been met for the proposed Amendment No. 1.

Issue “b.” Is the proposed wording appropriate?

FACTS

70. In the spring of 2014, the Government of Canada and the GN rejected the proposed amendment wording with written reasons that included the following:

- The proposed amendment did not provide for Multi-use corridor but rather limited it to a single user or single use, and
- The proposed amendment did not specify the width of the transportation corridor.

71. On January 18, 2019, BIMC proposed revised wording for Amendment No. 1 along with supporting materials.

72. On May 10, 2019 the Commission received comments on the proposed wording from:

- a. The Government of Canada, who noted that “the latest proposed wording of the Amendment No.1 has addressed many of the comments that it provided in April and June 2014 on the original recommended amendment.

“However, we recommend that the Commission address an inconsistency in wording. Section 2.2.1 states that the corridor is ‘more specifically described on Schedule A of the Amendment’ while section 2.3 states that ‘The location of the transportation corridor as shown in the appended map is approximate’. We consider that the map in Schedule A provides a general geographic and visual description of the corridor, rather than displaying its precise location. Therefore it is recommended that the text in section 2.2.1 state ‘as generally illustrated in Schedule A’. This recommendation should carry through other references to Schedule A in the Amendment including those in the Background section.”

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

73. On November 24, 2022 BIMC provided further revised wording to Amendment No. 1.

74. On January 16, 2023, the Government of Canada provided additional comments on the revised wording, noting that “the Government of Canada appreciates the incorporation of its

recommendation to describe the corridor as 'generally illustrated' in Schedule A, and is recommending the following changes:

- include the omitted text at the end of section 2.3 '... approximate. Minor adjustments shall not require a further amendment to the NBRLUP.'; and
- ensure the correct map with high resolution is included under Schedule A of Amendment No. 1."

ANALYSIS

75. The wording proposed by BIMC is generally consistent with the approved Amendment No. 3, which includes a railway and road north to Milne Inlet. Given that this wording was developed through a rigorous process and approved by the Commission and all signatories, this provides an appropriate basis to address the concerns that were identified with the 2014 wording when it was rejected.

76. The Commission agrees with the further edits suggested by the Government of Canada in 2019 and 2023.

77. The Commission attaches a revised proposed amendment as Schedule 1 to this report, and recommends the revised amendment be accepted in whole.

Signed on behalf of the Commission this 14th day of March, 2023

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

Andrew Nakashuk,
Chairperson
Nunavut Planning Commission

Schedule 1: Proposed Amendment No.1 to NBRLUP - Revised

Amendment Number 1 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 1 to the North Baffin Regional Land Use Plan which is effective as of _____

Aluki Kotierk, President,
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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 include a new transportation corridor in the North Baffin Regional Land Use Plan (NBRLUP).

1.3 Location

The lands generally located south east of Mary River, North Baffin Island, 1000km north of Iqaluit, 160km south of Pond Inlet and described as the line commencing 71.3N- 79.22W and running generally south-east approximately 34 kilometres to 71.13N- 78.46W 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 transportation corridor as described requires an amendment and that this amendment application satisfies the above provisions in respect of the proposed railway and road.

Whereas the NPC has jointly conducted with NIRB public reviews of the proposed transportation corridor for the Mary River Iron Ore Project, consisting of a portion of railway and service road connecting the mine site with Steensby Port, and as further described in BIMC's Final Environmental Impact Statement, which included information in accordance with Appendices J and K of the NBRLUP (February 2012), and as the NPC confirmed to NIRB on May 30, 2012 that, "*After an absence, presence review of the Baffin land Iron Mines Corporation (BIMC) documents related to the Mary River Project, the NPC observes that the provisions of sections 3.5.11 and 3.5.12 related to BIMC Mary River Project concerning the Joint Review has been satisfied.*":

- Pursuant to section 3.5.12 of the NBRLUP the NPC considers it appropriate to amend the NBRLUP to reflect the new transportation corridor. By amending the NBRLUP to identify the new 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 new transportation corridor, clarity, certainty and direction will be provided for other possible communication and transportation initiatives and/or systems in the Region.

Part 2 – The Amendment

Amendment No. 1 Mary River Transportation Corridor

2.1 Introduction

The following text and the attached schedule designated as Schedule “A” constitute Amendment No. 1 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 “R” is added after Appendix “P” in the NBRLUP.

Appendix “R”

The lands generally located south east of Mary River, North Baffin Island, 1000km north of Iqaluit, 160km south of Pond Inlet and described as the line commencing 71.3N- 79.22W and running generally south-east approximately 34 kilometres to 71.13N- 78.46W 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, consists of a railway and service road, as generally 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 transportation corridor is limited in width at all points 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 transportation corridor, for the purposes of the NBRLUP, may be used by any person for the purpose of transportation by road and rail 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 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 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.
 - 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 and rail projects proposed within the 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 transportation corridor as shown in the appended map is approximate. Minor adjustments shall not require a further amendment to the NBRLUP.

