



NUNAVUT PLANNING COMMISSION

CONFORMITY DETERMINATION BY THE COMMISSIONERS

PROPONENT:	Baffinland Iron Mines Corporation
PROJECT NAME:	Mary River Project Phase 2 (Phase 2, or project proposal)
FILE NO(S):	Nunavut Water Board (NWB) File: 2AM MRY1325 Department, Fisheries Oceans Canada (DFO) File: NU-07-HCAA-CA7-0050 Nunavut Impact Review Board (NIRB) File # 08MN053
PLANNING REGION(S):	North Baffin (NB)
APPLICABLE LAND USE PLAN(S):	North Baffin Regional Land Use Plan (NBRLUP)
COMMISSIONERS PRESENT	Ovide Alakanaurk, Peter Alareak, Terry Forth, Lawrence Levy, Andrew Nakashuk, Hunter Tootoo (Chairperson)
DATE OF DECISION:	April 8, 2015

SUMMARY:

1. The Nunavut Planning Commission (the Commission, or NPC) is mandated to make conformity determinations based on applicable land use plans. The proponent Baffinland Iron Mines Corporation (the proponent, or BIMC), and the authorizing agencies Fisheries Oceans Canada (DFO) and the Nunavut Water Board (NWB) referred the proponent's project proposal to the Commission for a conformity determination. The project proposal requests the Commission find that, among other things, the breaking of ice for shipping over the winter months conforms to the North Baffin Regional Land Use Plan (NBRLUP).¹
2. The NBRLUP was recently amended to add a transportation corridor to that plan, including a marine component from Milne Inlet through Eclipse Sound to Baffin Bay. In its public review of the amendment, the Commission was specifically asked not to consider whether to allow for ice breaking in that corridor.² The central issue the Commission now has to decide is whether the NBRLUP as amended means that the defined transportation corridor in Appendix Q of the NBRLUP allows ice breaking as a conforming land use despite other provisions and conformity requirements in the NBRLUP.
3. As the NBRLUP generally implies, ice is an essential part of life in the North. For people, for polar bears, for seals and other animals in the North, ice is a bridge –both metaphorically to the past and present Inuit values and activities, and also actually as a fact. Ice physically links Inuit to their Culture and Values. The NBRLUP also recognizes other modern economic values and development, and seeks to balance these various interests and values.

¹ Baffinland Iron Mines Corporation, Mary River Project Phase 2, Second Amendment to Project Certificate No 005 Project Description, October 29 2014, attached to Nunavut Planning Commission Senior Conformity Officer, Negative Conformity Determination Recommendation (NCDR) at Tab 6b (NCDR Tab 6b, BIMC Phase 2 proposal Project Description October 29, 2014).

² E-mail from O. Curran to C. Tickner, Re: Questions For Participants In Baffinland Early Revenue Phase Public Review Process, March 27, 2014, attached to NCDR at Tab 26.

4. After reading and deliberating on the Negative Conformity Determination Recommendation (NCDR) of the Senior Conformity Officer dated March 5, 2015, the response submissions of the proponent dated March 16, 2015 (Response to NCDR), and all relevant materials attached to the NCDR, based on the wording of the NBRLUP as amended, the Commissioners have voted unanimously to issue a negative conformity determination for the project proposal. Based on the wording of the approved amendment to the NBRLUP at Appendix Q, the proposed ice breaking activity for winter shipping would prevent or prohibit wildlife harvesting and traditional activities. The Commissioners therefore conclude that the project proposal as written does not conform to sections 3.2.1 and 3.3.1 of the NBRLUP.

MANDATE OF THE NUNAVUT PLANNING COMMISSION

5. As the NCDR says, land use planning plays a critical role in the development of Nunavut. The purpose of land use plans is 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.”³ The Commissioners note that the word “land” includes water and resources including wildlife”,⁴ meaning that as a “land” use plan, the NBRLUP must be interpreted to achieve these purposes not only on land, but also with respect to water, including ice, and resources including wildlife.
6. An accurate summary of the Commission’s mandate is provided in the NCDR, which is repeated in part here. Under Section 11.4.1 of the NLCA, the NPC’s major responsibilities are to:

³ Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (the Nunavut Land Claims Agreement, or NLCA) May 25, 1993, at s. 11.3.2; and North Baffin Regional Land Use Plan section 1.2(i) “Planning Principles under the NLCA”.

⁴ NLCA, s. 11.1.2.

- (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 [Designated Inuit Organization] DIO.

7. As also summarized in the NCDR, section 11.2.1 of the NLCA reads as follows:

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 wellbeing 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.

8. The Commission has a mandate to carry out conformity determinations of “project proposals” where an approved land use plan is in effect. The term “project proposal” is defined in Article 1 of the NLCA as follows:

“project proposal” means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out, or a physical activity that a proponent proposes to undertake or otherwise carry out, such work or activity being within the Nunavut Settlement Area, except as provided in Section 12.11.1;

9. Section 11.5.10 of the NLCA reads:

11.5.10 The NPC shall review all applications for project proposals. Upon receipt and review of a project proposal, the NPC or members thereof or officers reporting to the NPC shall:

(a) determine whether the project proposals are in conformity with plans; and

(b) forward the project proposals with its determination and any recommendations to the appropriate federal and territorial agencies.

The land use plan may make provision for the NPC to approve minor variances.

10. The Commission acts as a gatekeeper for the regulatory approval process for project proposals in Nunavut. Where a project does not conform to an applicable land use plan, the Commission does not forward the project proposal to the relevant authorizing agencies, the Nunavut Impact Review Board (NIRB), or the Nunavut Water Board (NWB), as applicable.⁵ In such a case, the NLCA says in section 11.5.11 of the NLCA that a proponent may seek an exemption from the appropriate Minister.⁶ However, the Commission notes that the NBRLUP, which was approved in 2000, as presently written does not provide for any approval of minor variances. Although a new land use plan or further amendment to the NBRLUP could authorize the Commission to consider and grant minor variances, the Commission must make its decision on the basis of the NBRLUP as it exists today.

11. In April 2007, the Commissioners passed a resolution under which positive conformity determinations may be made by delegated conformity officers or conformity panels, but that provides that delegates may only

⁵ NLCA, s. 12.3.1, 13.4.2.

⁶ NLCA, s. 11.5.11.

recommend negative conformity determinations to the full Commission to make a determinations. On February 5, 2015, the Commissioners approved a new procedure called the Procedure For Negative Conformity Determination, which was amended on March 3, 2015. The Commission's Procedure For Negative Conformity Determination, First Amendment (PFNCD) requires the Commission's delegate to obtain further information from a proponent on any areas of concern that may lead to a negative conformity determination recommendation (NCDR). Once the requested information has been provided, the delegate makes a NCDR rather than a negative determination, and the proponent is given notice of the NCDR and a period of 10 days (unless a time extension is requested and granted) to respond. After the proponent's Response to NCDR is received, the NCDR, the Response to NCDR, and other relevant materials are provided to the Commissioners at the same time for them to review to make a decision. For further clarity, in the event of an NCDR, until the Commissioners have made their final determination, no decision has been made.

FACTS:

12. The Commissioners reviewed the project proposal submitted by the proponent.⁷ Pursuant to the Commission's Procedure For Negative Conformity Determination, First Amendment, the Senior Conformity Officer prepared a project proposal summary, and the Executive Director provided a copy to the proponent on March 5, 2015. The proponent was given an opportunity to comment on the accuracy of that document, and did not identify any inaccuracies. The Commission accepts the project proposal summary as an accurate description of the project.⁸
13. The proponent requests the Commission make a positive conformity determination for Phase 2 that will result in:

⁷ NCDR Tab 6b, BIMC Phase 2 proposal Project Description October 29, 2014.

⁸ Project Proposal Summary, attached as Appendix 2.

- Increased truck volume on the Tote Road ... ;
- An increase in shipping transits through Northern Shipping Route ..., including transits through periods of ice;
- Additional berth capacity at Milne Port; and
- The establishment of a trans-shipping site in Eclipse Sound.⁹

14. The proponent's project proposal also explains its proposed shipping strategy. This would involve the "extension of the shipping season from June into March with the use of purpose built Polar Class Post Panamax sized self-discharging ore carrier for ship-to-ship transfer of ore (i.e. trans-shipping)."¹⁰ The proposal also involves the use of tugs and ice management vessels.¹¹ As summarized in the Senior Conformity Officer's Project Proposal Summary, which BIMC did not dispute, BIMC proposes:

- Shipping season starts in June (after ice has degraded in quality)
- 7-8 mpta during open season
- 4 mpta during winter months- NPC estimates between 44 to 84 one way ships passages annually that involve ice breaking between Milne Port and Baffin Bay.¹²

15. The Commission notes BIMC's position that it is not proposing to ship year-round. The project proposal does propose shipping in 10 months of each year, not 10 months of ice breaking. However, as noted further below, the proponent's project proposal is the first time the Commission has been asked to consider ice breaking from Milne Port through Eclipse Sound to Baffin Bay along the Transportation Corridor defined in Appendix Q to the NBRLUP. The Commission does not consider trans-shipping activities as being relevant to its conformity determination and these reasons instead focus on the ice breaking issue.

⁹ NCDR Tab 6b, BIMC Phase 2 proposal Project Description October 29, 2014, page 3.

¹⁰ NCDR Tab 6b, BIMC Phase 2 proposal Project Description October 29, 2014, page 11.

¹¹ NCDR Tab 6b, BIMC Phase 2 proposal Project Description October 29, 2014, page 11.

¹² NPC Project Proposal Summary, Baffinland's Mary River Project, Phase 2 Proposal, page 2.

16. Pursuant to the Commission's original Procedure For Negative Conformity Determination, the Senior Conformity Officer wrote to the proponent on February 10, 2015 requesting further information relating to his concerns on how the project proposal conformed to sections 3.2.1 and 3.3.1 of the NBRLUP. The Senior Conformity Officer drew the proponent's attention to several documents attached to his questions including a colour copy of the map of Essential Areas contained in Appendix G of the NBRLUP from the NBRLUP's predecessor the Lancaster Sound Regional Land Use Plan. The proponent responded to the Senior Conformity Officer on February 13, 2015 providing further information, and the Senior Conformity Officer reviewed that information received on February 13, 2015 in making his NCDR.
17. In its February 13, 2015 letter, the proponent took the position that it conforms with section 3.3.1 because it has agreed to follow the Code of Good Conduct in Appendix H of the NBRLUP. The proponent also submitted that because it is aware of the Essential Area in Appendix G and that it will make the NIRB, NWB, and DFO aware of those values, it conforms to section 3.2.1 of the NBRLUP. BIMC furthermore drew the Senior Conformity Officer's attention to other mines engaged in ice breaking as evidence that the impacts of ice breaking could be mitigated.

ANALYSIS:

18. The Commissioners have reviewed BIMC's information provided on February 13, 2015, the analysis in the NCDR and the relevant materials enclosed with the NCDR, and BIMC's Response to NCDR dated March 16, 2015.
19. Conformity determinations for land use planning are separate and distinct from the NIRB process, and pursuant to the NLCA must precede that process. BIMC submits in its Response to NCDR that the Commission can't assess environmental impacts for the purpose of determining conformity. However, BIMC also points to impact assessment and future mitigation measures that will be made through the NIRB process as being

grounds for the Commission to find conformity. BIMC submits the Commission cannot look at impacts for the purpose of assessing conformity, but also asks the Commission to consider proposed measures to mitigate impacts for the purpose of finding that the project proposal conforms to the NBRLUP. Mitigation measures are referred to in section 3.3.1 of the NBRLUP, which also requires that land users “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...”. It is not possible for the Commissioners to give a positive conformity determination to a project that does not currently conform to the plan on the basis that it might later come into conformity following the NIRB environmental assessment process.

20. Further to the proponent’s argument that the Commission should not look at impacts, the argument implies that the Commissioners should not look at the number of ship transits for this specific proposal. The proponent effectively asks the Commission to conclude the NBRLUP as amended allows ice breaking as a conforming land use, and to pass the project proposal for ice breaking to the NIRB and authorizing agencies to assess impacts and impose conditions. To follow the proponent’s logic, the Commission must consider whether the proposed physical activity of ice breaking conforms to the NBRLUP as amended, regardless of the timing or frequency. As explained below, this further supports the Commission’s conclusion that the NBRLUP as amended cannot be interpreted to give the project proposal as written a positive conformity determination.
21. The NCDR focused on sections 3.2.1 and 3.3.1 of the NBRLUP as being the grounds for recommending a negative conformity determination. The Commission reads BIMC’s Response to NCDR as being separated into three main arguments. First, the proponent argues that Appendix Q of the NBRLUP means the project proposal conforms to the NBRLUP. The proponent then argues that the provisions of sections 3.5.1 to 3.5.10,

specifically section 3.5.6, mean that the project proposal conforms to the NBRLUP as amended. Finally, the proponent submits that the project proposal meets the conformity requirements under sections 3.2.1 and 3.3.1 of the NBRLUP. The Commission briefly addresses the proponent's other submissions that go outside the grounds for the NCDR, as set out below.

Analysis of NBRLUP Appendix Q

22. The proponent asks the Commission to consider whether NBRLUP Appendix Q allows the newly proposed ice breaking activities. The NCDR quotes from a question referred to BIMC in the course of the Commission's public review on whether ice breaking was being proposed, and BIMC's response that ice breaking was not being proposed and that the reference was a typo. However, the proponent now takes the position that Appendix Q contemplated ice-breaking, referring the NPC to one bullet in that Appendix that reads:

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.

23. Although BIMC itself took the position in the Early Revenue Phase (ERP) public review that no ice breaking was being contemplated, it now interprets this bullet as permitting ice-breaking activities along the marine portion of the Milne Inlet Tote Road and Marine Transportation Corridor. It is important to note that the two bullets in Appendix Q preceding the one cited by BIMC read:

Nothing in this Amendment will prevent or prohibit the use of 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.

24. While the Appendix Q does state that, generally, the NBRLUP does not preclude navigation “in accordance with existing international law...”, Appendix Q specifically states that nothing in Appendix Q prevents or prohibits wildlife harvesting and/or traditional activities as defined. These values are expressly recognized and established land uses in the NBRLUP protected by conformity requirements such as 3.2.1 and 3.3.1, cited in the NCDR as the basis for the Senior Conformity Officer’s recommendation. Had BIMC applied to amend the NBRLUP for the purpose of using the transportation corridor for ice breaking, the Commission could have considered whether other conformity requirements such as sections 3.2.1 and 3.3.1 ought to have also been amended. Reading Appendix Q to permit ice breaking as a conforming land use in the manner suggested by the proponent would effectively “prevent or prohibit the use of lands ... for the purpose of wildlife harvesting and/or traditional activities carried out by residents of the Region”. This interpretation does not appear to be consistent with the wording of Appendix Q itself protecting these same values, the remainder of the NBRLUP read as a whole, or section 11.3.2 of the NLCA referred to above. In other words, 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.

Section 3.5 of the NBRLUP

25. The NCDR does not cite section 3.5 of the NBRLUP as grounds for making a negative conformity determination. However the proponent refers the Commission to section 3.5 of the NBRLUP as grounds for making a positive conformity determination. Although section 3.5 says the NPC does not support year-round Arctic shipping, in BIMC’s submission it

also does not expressly prohibit ice-breaking activities. The proponent cites section 3.5.6 as permitting shipping over the winter including ice breaking as long as ships avoid floe edges in April, May and June. The Commission has briefly considered the proponent's arguments on this point.

26. The Commission notes that section 3.5 of the NBRLUP reads: "The NPC does not support year-round Arctic shipping because of the uncertainty about its effects on regional residents and the environment and wildlife." Although it might not be explicit, given the references throughout the NBRLUP to the uses of the ice by wildlife and hunters, the Commission considers it implicit that the uncertain effects includes those caused by ice breaking. Furthermore, the reference to 3.5.6 is not relevant to the conformity determination for this project proposal before the Commission because the proposed ice breaking route over the winter will be breaking through solid ice between Milne Inlet through Eclipse Sound to Baffin Bay, rather than along floe edges. Section 3.5.6 suggests that it is important that ships not cause the early degradation of floe edges, which, as section 2.1.5 of the NBRLUP and the associated maps and figures explain, are essential to both wildlife and hunters for seasonal harvesting in the spring.¹³ The Commissioners do not consider the proponent's arguments under section 3.5.1 to 3.5.10 relevant to the issue of whether the project proposal conforms to the NBRLUP as amended.

Analysis of NBRLUP Section 3.2.1

27. The NCDR cites NBRLUP section 3.2.1 as one of two conformity requirements that the project proposal does not conform to. That section has two parts, the first of which is marked as a conformity requirement, the second is marked as an "action" or measure "that, on approval of this plan,

¹³ See NCDR at paragraphs 33, 38, 42.

are required to be taken either by government or the NPC pursuant to s. 11.5.9 of the NLCA”.¹⁴ It reads:

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]

28. The conformity requirement contained in section 3.2.1 makes land users refer to Appendix G and adjust work plans to conserve those values in Appendix G. The proponent proposes to conduct ice breaking when the Essential Area identified in Appendix G is being used by other land users for traditional activities, harvesting, and as wildlife habitat. Appendix G makes it clear that “The area is essential to the community for hunting, fishing and trapping” and that “The community cannot survive without these areas.” The Commission agrees with the NCDR that this implicitly requires “access to those Essential Areas”, and moreover notes that Appendix Q to the NBRLUP ensures that the transportation corridor does not interfere with these values as explained above.
29. The Commission must make its determination on the basis of the evidence before it. The proponent’s February 13, 2015 letter focused on listing mitigation measures adopted by other mining operations in other locations in the North. This information did not persuade the Senior Conformity Officer that the project proposal conformed under section 3.2.1. The proponent was advised on March 5, 2015 that the Commissioners would not consider new evidence without giving the Senior Conformity Officer an opportunity to respond, and responded with the Response to NCDR on March 16, 2015 but elected not to provide any new evidence. The Commission is not satisfied that any of the examples of mitigation measures from other mine sites provided by BIMC are

¹⁴ *North Baffin Regional Land Use Plan* (June, 2000) as amended, page 29, footnote 7.

sufficiently analogous to the current project proposal to be of any assistance to the Commissioners in establishing that the project proposal conforms to the NBRLUP. In brief, they are not relevant to the Commission's conformity determination.

30. In its Response to NCDR, the proponent referred to community consultations in the NIRB process for the Mary River Project and the consideration of the Early Revenue Phase (ERP) in which Commission staff participated.¹⁵ However, in the public review of the ERP project proposal the proponent stated, without reservation, that no ice breaking activities were being proposed in the ERP project proposal or amendment. These prior consultations do not show that ice breaking conforms with section 3.2.1 of the NBRLUP.
31. The proponent also committed to make the NIRB, DFO, and NWB aware of the values to be conserved as proof the project proposal conforms to section 3.2.1 of the NBRLUP. The Commission is itself required to take the action set out in the last sentence of section 3.2.1,¹⁶ and must take action to conserve these identified values at the conformity determination stage. As explained above, the Commission must make a determination on section 3.2.1 before a project proposal goes to those government agencies who have their own obligations to conserve these values. The Commission is not persuaded by the proponent's arguments in relation to section 3.2.1 of the NBRLUP, and finds that the project proposal does not conform with section 3.2.1.

Analysis of Section 3.3.1

32. The NCDR cites NBRLUP section 3.3.1 as the second conformity requirement that the project proposal does not conform to. Section 3.3.1 of the NBRLUP reads:

¹⁵ BIMC, Response to NCDR, March 16, 2015, page 12.

¹⁶ NBRLUP, page 29, footnote 7.

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]

33. Section 3.3.1 refers to the Code of Good Conduct in Appendix H of the NBRLUP. BIMC agrees to follow Appendix H. However, the NCDR recommends the Commissioners find that since Appendix H does not expressly refer to avoiding damage to community travel routes and other protected land uses, it should be read together with the wording of section 3.3.1. The proponent did not disagree with the NCDR's interpretation of section 3.3.1 read together with Appendix H.
34. The proponent's Response to NCDR instead reiterated its commitment to follow the Code of Good Conduct, referred to the impact assessment process as one in which parties may make submissions, and referred the Commission to section 3.5.6.¹⁷ As noted above, section 3.5.6 of the NBRLUP relates to protecting floe edges in April, May and June, and not to breaking solid ice from Milne Inlet through Eclipse Sound and out to Baffin Bay. While it may be the NIRB's mandate to ensure impacts to wildlife, wildlife habitat, and community travel routes are mitigated, the Commission's mandate is to decide whether activities that would cause such impacts should be allowed to proceed to the next stage of regulatory review and approval at all.
35. The Commission has concluded that Appendix H must be read as proposed by the NCDR in order to give effect to the stated purposes of the

¹⁷ BIMC Response to NCDR, March 16, 2015, pages 14 – 17.

NBRLUP as set down in section 11.3.2 of the NLCA: “for land users to ‘respect the traditional users of the land’ they must avoid “damage to community travel routes.” Specifically, BIMC proposes regularly damaging community travel routes and provides examples of other ice breaking activities and mitigation measures that are not comparable or relevant to the Commission’s conformity determination as noted above. Based on the calculated frequency of 44 to 84 one way ice breaking ship transits each winter, the Commission is satisfied that this would amount to prohibiting or preventing the wildlife harvesting and traditional activities expressly protected by Appendix Q of the NBRLUP. As explained above, the Commission does not interpret the reference to navigation in Appendix Q to the NBRLUP as trumping the conformity requirements in sections 3.2.1 and 3.3.1.

36. As referred to in the NCDR, the NBRLUP states in Section 3.3 in part:

Renewable resources are the vital threads that link Inuit culture and society from the past to the present and into the future. Inuit and their ancestors have sustained themselves for several thousand years on the renewable resources of the region. Hunting, fishing and trapping continue to provide people in the region with food, clothing, shelter, cash and materials for arts and crafts. In recent years, the more widespread commercial promotion of country foods, arts and crafts and tourism opportunities has introduced new income-generating possibilities compatible with this renewable-resource based lifestyle.

A main goal of land use planning is to protect and maintain the health and well-being of people, the environment and wildlife. For millennia, Inuit fortunes were linked to the animals they hunted. Today, a healthy wildlife population remains vital to Inuit social, cultural and economic well-being.

...

“The Inuit economy is “mixed”. That is, it has two components, each dependent on the other: harvesting from the land, and wage employment. Wage earnings are used to supplement hunting activities; hunting provides food, which, among other benefits, replaces expensive imported items.

37. As the NCDR explains, for hunters to be able to venture out across the ice, they may need to return at any time. Ice breaking that damages community travel routes would restrict the ability of residents to come and go, whether at will or by necessity. Furthermore, while BIMC focuses on impacts to the residents of Pond Inlet, the Commission also needs to consider whether wildlife harvesting and traditional travel routes of other land users, such as those from Arctic Bay approaching Pond Inlet, may also be affected.
38. Section 3.3.1 requires that land users time their operations to avoid harm to wildlife and wildlife habitat and damage to community travel routes. The project proposal includes shipping through ice activities between October and March of each year when the NBRLUP says other land users and wildlife are using the ice. The Commission concludes the project proposal does not protect opportunities for domestic harvesting, and based on the proposed timing of operations, conclude that the ice breaking would result in harm to wildlife and wildlife habitat and damage to community travel routes. The project proposal does not conform to section 3.3.1 of the NBRLUP.

CONCLUSIONS:

39. In June 2000, two land use plans were approved and came into effect in the North Baffin Planning Region and the Keewatin Planning Region. Although the Commission has been performing conformity determinations under those plans for almost 15 years, this is the first negative conformity determination made in the history of the Commission. The Commissioners therefore considered it important to provide fulsome written reasons for their determination, not only out of fairness to the proponent BIMC, but also to ensure it reached a well-considered decision that would educate and inform others as to the Commission's role and process in making conformity determinations.
40. The Commissioners wish to take this opportunity to further explain its role in the regulatory system in Nunavut. The NLCA established the

Commission as a first stage of review of project proposals for physical works and activities in Nunavut that precedes environmental impact assessment and approval processes by the NIRB, NWB, the territorial government, and the federal government. The Commission receives completed applications for project proposals from authorizing agencies that are in receipt of project proposals from proponents seeking the necessary permits, licences, and other authorizations. A project proposal must conform to an applicable land use plan before it advances to the next step in the regulatory process. Because conformity precedes and is distinct from impact review, the Commission needs evidence that a project conforms with a plan at the time of reviewing the project proposal. Future measures to be developed through the NIRB process may mitigate environmental impacts, but if the proposed land use does not conform with an applicable plan at the time of review, the Commission cannot give a positive conformity determination on the basis that the proponent may later be brought into conformity.

41. The Commissioners have made a negative conformity determination for the reasons given above, based on the NBRLUP as it presently reads. Apart from the Appendix Q referred to above, the NBRLUP has not been updated or reviewed due to the Commission's efforts in developing a Nunavut-wide land use plan and institutional constraints that have precluded it from doing both. The NBRLUP still explains that large-scale extraction of resources is not foreseen, specifically naming the Mary River ore deposit as an example of such a project.¹⁸
42. The Commission notes that its decision, although final, does not mean that the proponent cannot continue with its existing and already-approved project. The proponent may still:
- apply to the appropriate Minister for an exemption from the NBRLUP in accordance with the NLCA;

¹⁸ NBRLUP, page 21.

- amend the project proposal to comply with the NBRLUP and resubmit the amended project proposal;
 - apply to the Commission to amend the NBRLUP; or
 - re-evaluate the project proposal.
43. The NCDR noted no amendment for a transportation corridor was applied for by BIMC, and that had one been applied for the Senior Conformity Officer would have recommended a negative conformity determination based on sections 3.2.1 and 3.3.1. The NCDR suggests that if an application to amend the NBRLUP were to be made to allow the existing project proposal to proceed, the proponent and the Commission would also have to consider consequential amendments to those conformity requirements. The Commission raises this issue only to note that the proponent is not precluded by this decision or the NCDR from making an application to amend the NBRLUP and that the Commission would consider such an application.
44. The Commissioners wish to address one final point. The proponent implied that if the Commission gives the project proposal a negative conformity determination, the public would be deprived of an opportunity to be heard. The conformity determination process is the Commission's interpretation of the provisions of the NBRLUP that were drafted based on extensive public consultation and input. In light of the Commission's decision, it remains open to the proponent to apply for an amendment to the NBRLUP and later resubmit its project proposal if the NBRLUP were to be amended, or to pursue those other options listed above. The

Commission would then be able to conduct a public review on this issue for land use planning purposes.

Dated this 8th day of April, 2015



Hunter Tootoo, Chairperson
On behalf of the Nunavut Planning Commission

APPENDICES:

1. Map from Negative Conformity Determination Recommendation, March 5, 2015
2. Project Proposal Summary, Baffinland's Mary River Project, PHASE 2 Proposal

1. Map from Negative Conformity Determination Recommendation, March 5, 2015

1 Geographic Context

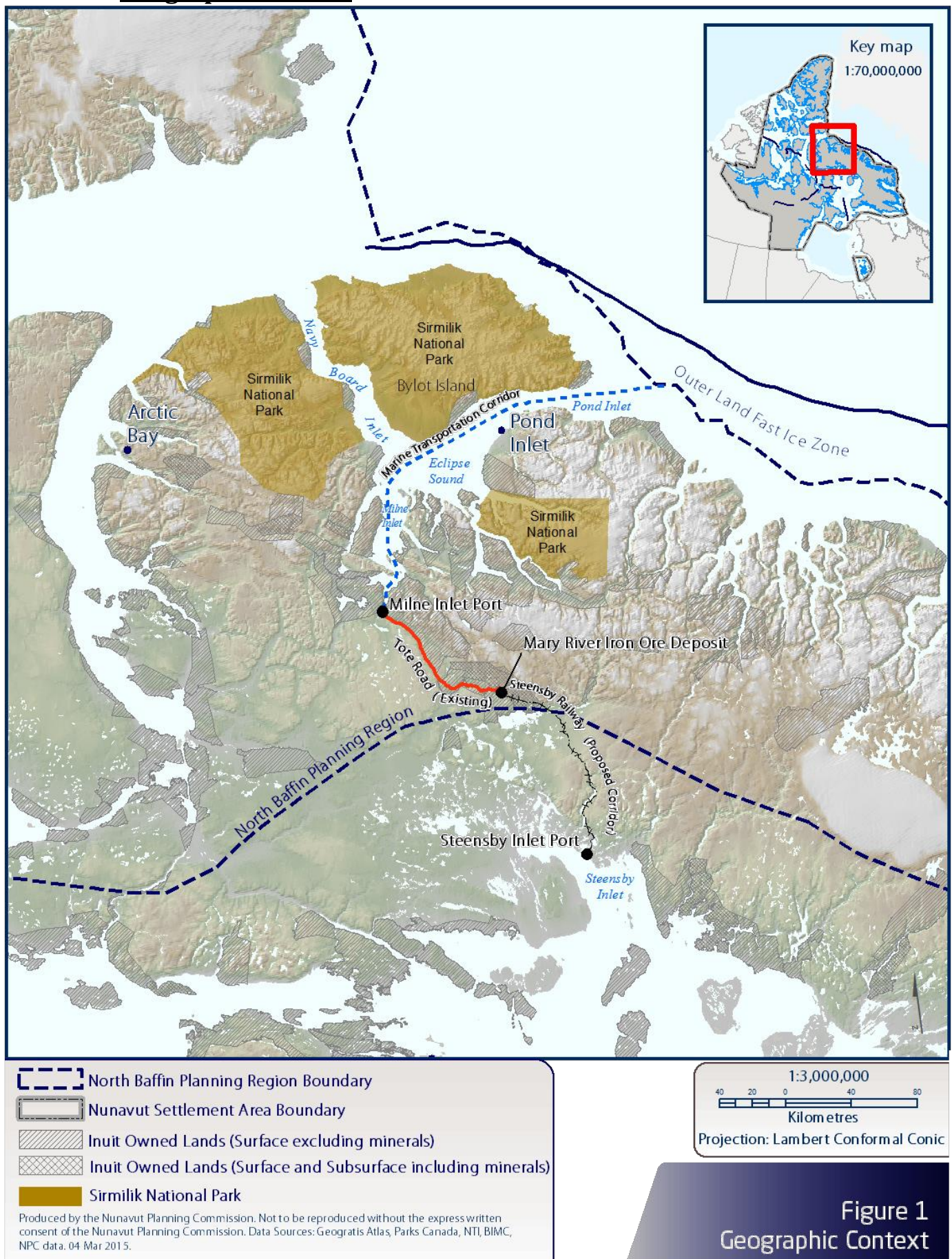


Figure 1
Geographic Context

2. Project Proposal Summary, Baffinland's Mary River Project, PHASE 2 Proposal

PROJECT PROPOSAL SUMMARY

Baffinland's Mary River Project

PHASE 2 Proposal

On October 29, 2014, the Nunavut Planning Commission (NPC) received a request for a conformity determination from Baffinland Iron Mines Corporation (BIMC) for a Phase 2 development proposal of the Mary River Project (Phase 2).

BIMC proposed Phase 2 activities are inside the boundaries of the North Baffin Regional Land Use Plan (NBRLUP).

The Nunavut Impact Review Board (NIRB) issued a Project Certificate No. 005 (PC 005) to the BIMC for the Mary River Project in December, 2012. The BIMC further received an amendment to PC No 005 for the Early Revenue Phase (ERP) in May, 2014.

The ERP enables BIMC to mine and truck ore along an existing tote road to Milne Inlet, then ship up to 4.2 million tonnes per annum (mtpa) of iron ore from Milne Port through Eclipse Sound to world markets.

In the Phase 2 proposal, BIMC has stated;

-it will continue with a planned phased development approach of the Mary River Project and continue to defer the construction of certain projects that are already approved under PC 005.

and that;

-construction and operation of the railway to Steensby Inlet and the port at Steensby Inlet are to be delayed beyond 2015, the BIMC also states that they are still committed to the development of a railway and a Steensby Port as authorized under PC 005."

Further, the BIMC suggests that more capital investment is necessary to initiate the railway phase of the project that exceeds \$5 billion and that the current market condition do not allow BIMC to achieve this goal. A need exists for the BIMC to demonstrate the ability of their proposed project to generate cash flow, and to demonstrate the quality and demand for their iron ore product. For this reason the BIMC is proposing the Phase 2 proposal that is associated the development of the Mary River Project. The Phase 2 activities are intended to enhance already existing infrastructure for the ERP which would allow BIMC to increase shipments of iron ore from Milne Port to the world markets.

Summary of Phase 2 Activities

- BIMC wishes to retain all authorizations that are already in place allowing the Company to proceed with the development of the railway and Steensby Port once financing is secured.
- Increase shipping of iron ore 7.8 mtpa above already approved 4.2 mtpa under the ERP from the Milne port, through Milne Inlet, through Eclipse Sound (total 12 mtpa)
 - Increase of shipping fleet
 - Tugs
(ERP-2)(Phase 2 - 4)
 - Ice management vessels
(ERP –none) (Phase 2 – 2)

- Polar Class Ore Carriers (Self discharging)
(ERP -none) (Phase 2 -2)
 - Increasing the trucking fleet to transport up to 12 mtpa, 22 trucks (ERP) to 75 trucks (Phase 2)
 - Increasing truck trips per day to 300 round trips per day
 - Twinning of 4 existing bridges along the Tote Road
- After construction of the Steensby Railway and Port, an additional 18 mtpa would be sent through those facilities. This will increase the total rate of extraction to 30 mtpa
- Increased utilization of Milne Port for shipping,
 - Addition of a second dock
 - Increase areas of footprint or potential development area (PDA) to be used already approved as described in the PC 005
 - Additional fuel storage on land and in water
 - Configuration of ore dock to be capable of accommodating all-season shipping
- Extension of the shipping season from June into March with expected total of 150 voyages that includes the ore carriers, freight and fuel vessels
 - Shipping season starts in June (after ice has degraded in quality)
 - 7-8 mtpa during open season
 - 4 mtpa during winter months- NPC estimates between 44 to 84 one way ships passages annually that involve ice breaking between Milne Port and Baffin Bay
- Trans-shipping from the purpose built ice class self-discharging ore carriers to Cape vessels in Eclipse Sound during the open water season (mid-July & mid-October), and trans-shipping from the purpose built ice class self-discharging ore carrier(s) to market Panamax and Cape vessels in Greenland waters from June to mid-July and from mid-October into March.
- The buildup to full capacity of ore shipment to 12 mtpa will take several years
- Maximize open water shipping season by increasing port utilization
- Based on estimated reserves, Deposit No. 1 could extend life of project for 21 yrs
- BIMC assumes that the Phase 2 activities will provide financing for the railway/Steensby Port components of the approved Mary River Project that would become available to begin engineering by the year 2020 with a full scale mobilization at all project sites by 2021
- Enlargement of ore stockpile to 150,000 tonnes, 2 additional crushers, haul trucks
- Increase accommodations to 500 employees capability