



May 21, 2015

The Honourable Bernard Valcourt
Minister of Aboriginal Affairs and Northern Development
Government of Canada
Executive Offices
10 Wellington Street
Gatineau, QC K1A 0H4

Dear Minister Valcourt:

Re: Proposed Mary River Project Phase 2 Development and Application for Exemption from Conformity with North Baffin Regional Land Use Plan and Referral to NIRB

The purpose of this letter is to apply for an exemption from the North Baffin Regional Land Use Plan (**NBRLUP**) under section 11.5.11 of the Nunavut Land Claims Agreement (**NLCA**), in relation to the use of existing transportation corridors for Baffinland's proposed Phase 2 Development of the Mary River Project (**Phase 2**). Baffinland also requests that the Minister refer Phase 2 to the Nunavut Impact Review Board (**NIRB**) to permit NIRB to commence its Phase 2 processes in the near term.

This application for an exemption and NIRB referral follows a determination by the Nunavut Planning Commission (**NPC**) on April 8, 2015, that the proposed Phase 2 development is not in conformity with the NBRLUP (the **Determination**). The NPC determined that the Phase 2 proposal to extend the shipping season to include shipping through ice in Milne Inlet and Eclipse Sound (the **Northern Shipping Route**) did not conform to the NBRLUP. The NBRLUP currently includes the Northern Shipping Route as a designated marine transportation corridor. While Baffinland provided submissions in support of its view that Phase 2 conforms to the NBRLUP, NPC made a negative Determination based on NPC's interpretation of the text of the NBRLUP.

The NPC Determination (and NLCA) identified as options for moving forward, either an application to amend the regional NBRLUP or to seek a Ministerial exemption and referral to NIRB under section 11.5.11 of the NLCA. As the NPC is currently actively proceeding with its process for review of the Nunavut Land Use Plan which (once approved) would apply Nunavut-wide and replace the current regional NBRLUP, we believe that the option of seeking a Ministerial exemption and referral to NIRB is most appropriate in the circumstances.

SUMMARY OF EXEMPTION OPTION

Under the NLCA, project proposals located in the areas of Nunavut where a land use plan is in effect may take one of two regulatory pathways. One option is to first obtain a positive conformity determination with any applicable land use plan followed by completion of the NIRB process. As an alternative the NLCA also provides proponents with the option to seek

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Ministerial exemption from the land use plan conformity requirement, where the Minister deems this appropriate, and obtain a direct referral to the NIRB process. Sections 11.5.11 and 11.5.12 of the NLCA provide as follows:

11.5.11 Where the NPC has determined that a project proposal is not in conformity with the plan, the proponent may apply to the appropriate Minister for exemption. The Minister may exempt the project proposal from conformity with the plan and shall, subject to Sections 12.3.2 and 12.3.3, refer it to NIRB for screening. Nonconforming project proposals shall not be sent to NIRB until such exemption is obtained or a variance has been approved.

11.5.12 Where the appropriate Minister exempts a project proposal, the Minister shall supply the NPC with written reasons and such reasons shall be made public.

Under section 11.5.11 of the NLCA, a Ministerial exemption would not authorize Phase 2 – but only would enable Phase 2 to be considered by the NIRB under Article 12 of the NLCA. A NIRB process would provide for a detailed consideration of the potential environmental and socio-economic impacts and benefits of Phase 2. Baffinland also wishes to emphasize that we fully support and respect the NLCA processes, the roles and responsibilities of Nunavut Institutions of Public Government (including the NPC and NIRB). Respect for Inuit and Inuit cultural values are central to the way we do business. We are confident that the NLCA processes, institutions and values will be fully considered and applied in the NIRB process with respect to the Phase 2 proposal, as they have demonstrated during the previous Mary River project approval processes.

The NIRB processes will include a public hearing, and opportunities for participation by any individual Inuk or Elders who wish to participate, the Qikiqtani Inuit Association (**QIA**), the community of Pond Inlet, the Mittimatalik Hunters and Trappers Association (**HTO**), and federal and territorial regulatory authorities with relevant expertise. At the completion of this process the NIRB will issue a recommendation as to whether Phase 2 should be permitted to proceed, and if so, under what terms and conditions. Any NIRB recommendation on whether the Phase 2 proposal can proceed will also require Ministerial approval.

MARY RIVER PROJECT BACKGROUND AND OVERVIEW OF PHASE 2 PROJECT PROPOSAL

As the Minister may be aware, the Mary River Project commenced mining in September 2014, after completion of a comprehensive environmental and social-economic assessment and regulatory permitting process. In September 2013, Baffinland and the QIA entered into a long term Inuit Impact Benefits Agreement as well as land tenure agreements, which together ensure that Inuit will be consulted and benefit from the Mary River Project as long as it operates. Both the company and Inuit have benefited from the project, and we wish for these benefits to continue.

In order to ensure that development of the Mary River Project is economically sustainable, Baffinland is developing the project in phases. The initial Mary River Project Certificate No. 005 (issued December 2012) authorized mining operations at Mary River, a railway southwest to Steensby Inlet, and year-round shipping (including shipping in ice) to and from Steensby Inlet through Hudson Strait and Foxe Basin (the **Southern Shipping Route**). During the NIRB review of the Mary River Project there was extensive consultation with communities and other

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stakeholders to ensure that shipping in ice (at a much greater frequency and with larger ice capable vessels than what is proposed for Phase 2) could be done in an environmental and socially acceptable manner. In the Mary River Final Report, the NIRB reviewed the Crown consultation record that expressly documents community perspectives and mitigations with regard to these approved winter shipping activities.

As the necessary capital investment for the railway/Southern Shipping Route option is not feasible in the current economic environment, Baffinland developed the Early Revenue Phase (ERP) to enable the Mary River Project to be developed in a phased and less capital intensive manner. NPC determined that before the ERP could proceed in conformity with the NBRLUP, it was necessary to amend the NBRLUP to add the Northern Shipping Route as well as a specified terrestrial transportation route (the **Milne Inlet Tote Road**). In May 2014 NPC amended Appendix Q of the NBRLUP to add the Northern Shipping Route and the Milne Inlet Tote Road, and NIRB issued amendments to the Project Certificate which permitted Baffinland to proceed with the ERP.

The next necessary phase of the Mary River Project is Phase 2. Phase 2 will see an increase in production and shipment of ore, which is important to the economics of the Mary River Project. This additional efficiency is vital in supporting the financial viability of the Project and is necessary to ensure that the benefits of the Mary River Project and the ERP will continue. The Phase 2 proposal forecasts a 21 year mine life and will use the ERP transportation corridors already included in Appendix Q of the NBRLUP. Phase 2 proposes to extend the shipping season along the Northern Shipping Route to include shipping from June into March. The NBRLUP, section 3.5.6 notes that “ship traffic through and around the floe edges in April, May and June shall be minimized”. Phase 2 conforms to this provision. In recognition of the importance of Inuit use of sea ice, Phase 2 shipping would not occur in April and May, and we currently plan only minimal shipments in June, likely after the condition of the ice has deteriorated and has limited use for travel and hunting activities.

Phase 2 will not proceed without successful completion of the NIRB process and an appropriate adjustment of the existing Inuit Impact Benefit Agreement with QIA. Phase 2 will operate in full compliance with all applicable regulatory requirements and as per our negotiated agreements with the QIA. As always, Baffinland intends to operate Phase 2 in a safe, sustainable, socially and environmentally acceptable manner. Our proven Arctic experience will ensure we meet this goal.

CONSIDERATIONS IN SUPPORT OF THE EXEMPTION APPLICATION

Baffinland has identified several points for the Minister’s consideration in relation to our exemption and NIRB referral request.

- (a) Exemption and referral would permit the NIRB to commence an assessment of the potential environmental and socio-economic effects of shipping in ice, as well as potential mitigation measures**

Based on Baffinland’s recent consultations with QIA, the community of Pond Inlet and the HTO with respect to Phase 2, the concept of extending the shipping season and shipping in ice along the Northern Shipping Route is not rejected outright and the topic of shipping in ice is worthy of further discussion within the NIRB process. We would also refer the Minister to the May 5, 2015 letter by the Hamlet of Pond Inlet, attached at **Appendix A.i**, in which the Hamlet expresses

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disappointment in the lack of consultation and misinterpretation contained in the NPC Determination. We have also attached correspondence from QIA relating to the NPC Determination at **Appendix A.ii.**

As would be presented to NIRB, shipping in ice in Canada, Nunavut and the Arctic is not a new activity. As noted above, the Mary River Project was approved for year-round shipping (including landfast ice) along the Southern Shipping Route under the terms of NIRB Project Certificate No. 005. The approved activity includes larger vessels to transport more ore at a greater frequency than what is proposed for Phase 2. We also note that extensive consultations and workshops with the communities of Kimmirut, Cape Dorset, Hall Beach and Igloolik resulted in NIRB including several Project Certificate conditions, such as marking the ship track, to ensure safe ice travel and use. There are many proven examples of marine transportation through land fast ice in Nunavut and the Canadian North, including Polaris Mine and the Nanisivik Mine (Nunavut), Raglan Mine (Deception Bay, Northern Quebec), and Voisey's Bay Mine (Anaktalak Bay, Labrador) that have demonstrated that shipping activities are not only an integral part of northern development, but that shipping through ice can co-exist with peoples use of the ice for travel and hunting activities.

Baffinland is well aware that a decision to proceed with Phase 2 is important for Inuit, and that they must be integrally involved in the process. As such, Baffinland has identified potential mitigation measures for shipping in ice along the Northern Shipping Route and has already conducted two workshops with representatives of Pond Inlet and the local HTO to understand their perspectives, their travel and hunting activities and how various mitigations could be implemented to ensure Phase 2 shipping is compatible with Inuit use of the ice. Part of this engagement included a site visit for members of the community of Pond Inlet, the HTO and the QIA to attend Nain, Labrador (near the Voisey's Bay mine) to view winter shipping in person, and to see the mitigation measures that are carried out in connection with those operations. Baffinland remains confident that continued dialog and consultations with Pond Inlet and other impacted communities (if an exemption from the NBRLUP is granted) will ensure that shipping associated with Phase 2 can be compatible with the interests of all stakeholders including the community of Pond Inlet. Results of these consultation would be utilized in Baffinland's Phase 2 Addendum to the Mary River Project Environmental and Socio-Economic Impact Statement, which would then be considered during the NIRB Phase 2 process.

(b) Exemption as the preferred option

As noted above, the NPC identified in its Determination options for moving forward, including an application to amend the regional land use plan, or an application for Ministerial exemption. In its Determination the NPC stated (at para. 41) that:

"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 have precluded it from doing both."

While the NLCA contemplates Nunavut-wide land use plans, currently, only two land use plans are currently in effect in Nunavut - the NBRLUP and the Keewatin Regional Land Use Plan, both of which were approved in 2000. Land use plans have not been approved for the

remaining four regions. Since 2007, the NPC has been focussed on developing a land use plan which will apply territory-wide and would replace the outdated current land use plans.

As announced on May 1, 2015, NPC is now actively moving forward with its processes and intends to finalize the draft Nunavut Land Use Plan, following technical meetings in June 2015, a pre-hearing conference in July 2015 and public hearings which have not yet been scheduled. Although we recognize that the draft Nunavut Land Use Plan is still in process, it is our understanding that Phase 2 would conform to the new plan as it does not prohibit or restrict any shipping activity (including shipping in ice) in the marine transportation corridor to be used for Phase 2. We understand that transportation infrastructure is generally considered to conform to the draft plan in all areas unless expressly prohibited under a particular Land Use Designation, and none of the draft Land Use Designations along the applicable transportation corridor prohibit transportation.

Baffinland considered the option (also identified in the NPC Determination) of seeking an amendment to the NBRLUP. After requesting confirmation of an amendment process and timelines at a teleconference with NPC senior staff, Baffinland followed up on April 28, 2015 with a written request to NPC for detailed information about the content, process and timing for an NBRLUP amendment application (see **Appendix B.i**). Baffinland proposed specific draft amendment wording in order to obtain meaningful NPC feedback on a potential amendment process. On May 5, 2015, NPC wrote that it would need to consider how such an application would affect its existing workplans, that it could not provide details regarding an amendment process or timing at present, and that such details may not be available until the 2016/ 2017 fiscal year (see **Appendix B.ii**). As noted above, NPC's existing workplans include a focus on the approval process for the draft Nunavut Land Use Plan. On May 19, 2015, the NPC provided an additional letter (see **Appendix B.iii**) which attached an internal, pro-forma amendment process that would apply under the *Nunavut Planning and Project Assessment Act (NuPPA)*, however NuPPA is not yet in force. Accordingly, there remains considerable uncertainty respecting process, timelines and NPC capacity in relation to an amendment application.

Project timelines cannot sustain further delay of the commencement of the NIRB process until after the 2016/ 2017 timeline referenced in NPC's May 5, 2015 correspondence, or after completion of the Nunavut Land Use Plan. Baffinland has already significantly reduced its originally intended 2015 scope of work, resulting in a corresponding reduction of economic benefits to the North Baffin region and project benefits to the QIA and Inuit. Continued uncertainty regarding Phase 2 will undermine Baffinland's ability to ensure that project benefits continue to flow.

Given that the draft Nunavut Land Use Plan (which Phase 2 conforms to), if adopted and approved, will replace the outdated NBRLUP, and given that the NPC is focussing on the process for the draft Nunavut Land Use Plan, it seems that an application for exemption to the NBRLUP is the most sensible path forward.

CONCLUSION

Review and development of the Phase 2 project is necessary to ensure that the benefits of the Mary River Project and the ERP will continue to provide support to the Qikiqitani Region, Nunavut and Canada. We believe that an application for exemption and direct referral to NIRB, pursuant to NLCA section 11.5.11, is the best path forward, ensuring that a fair and public NIRB process is initiated whereby Inuit, North Baffin communities, the QIA, federal and territorial

regulatory authorities and all other interested parties are given the opportunity to consider a detailed environmental and socio-economic impact assessment along with proposed mitigations. The NIRB process will ensure that all stakeholders are able to evaluate the Phase 2 proposal as to its suitability from an environmental and socio-economic standpoint.

In addition to the attachments referred to above, we have included a summary of the economic benefits to date of the Mary River Project at **Appendix C**. Also, for the Minister's reference, we have enclosed at **Appendix D** documentation relating to the Phase 2 NPC Determination, which includes the Phase 2 Project Description and further details about Phase 2.

- The following is a summary of the reasons outlined above for proposing the exemption as the most sensible approach for moving forward: review and development of Phase 2 is necessary for the economic sustainability of the Mary River Project and the ERP;
- the NPC identified both the exemption option and the NBRLUP amendment option as potential paths forward for Phase 2;
- the NPC is currently focussing its efforts on the draft Nunavut Land Use Plan, not on reviewing the regional land use plans that are already in effect;
- it is our understanding that the shipping proposed in Phase 2, including shipping through ice, would be in conformity with the current draft Nunavut Land Use Plan;
- an exemption would not authorize Phase 2 but only would enable Phase 2 to be considered by the NIRB under Article 12;
- an exemption from the NBRLUP is the most efficient way to bring Phase 2 to a NIRB public hearing, where Inuit, North Baffin communities, the QIA, and other stakeholders will participate in the review; and
- an application for exemption is expressly contemplated in the NLCA and is respectful of Nunavut Institutions of Public Government and Inuit values.

We would be pleased if you would consider this application as soon as possible, and we will provide any further information that you may require.

Sincerely,



Erik Madsen, Vice President
Sustainable Development, Health, Safety & Environment

Encl.

Summary of Attachments:

Appendix A: May 2015 Correspondence from Hamlet of Pond Inlet and from QIA regarding NPC Determination

- i. Letter from Hamlet of Pond Inlet to NPC (May 6, 2015)
- ii. Letter from QIA regarding NPC Determination (May 20, 2015)

Appendix B: April - May 2015 Correspondence between NPC and Baffinland Regarding Land Use Plan Amendment Option

- i. Letter from BIMC to NPC re NBRLUP Amendment Process (April 28, 2015)
- ii. Letter from NPC to BIMC responding regarding Amendment Process (May 5, 2015)
- iii. Further Response to Request for Explanation of Amendment Application Process April 28, 2015 (May 19, 2015)

Appendix C: Summary of Benefits of Mary River Project to Date

Appendix D: October 2014 – April 2015 Documentation Relating to Phase 2 Application for Conformity with NBRLUP, and NPC Determination

- i. BIMC Phase 2 Conformity Application cover letter (October 29, 2014)
- ii. BIMC Phase 2 Conformity Application – Project Description and NPC form (October 29, 2014)
- iii. BIMC Response to Information Request from NPC (February 13, 2015)
- iv. NPC Negative Conformity Determination Recommendation (March 5, 2015)
- v. BIMC Response to Recommendation (March 16, 2015)
- vi. NPC Negative Conformity Determination cover letter (April 8, 2015)
- vii. NPC Negative Conformity Determination (April 8, 2015)

cc: Mr. Peter Taptuna, Premier
Mr. PJ Akeeagok and Ms. Navarana Beveridge, QIA
Mr. Charlie Inuarak, Mayor of Pond Inlet
Ms. Natasha Mablick, HTO
Mr. Hunter Tootoo and Ms. Sharon Ehaloak, NPC
Mr. Ryan Barry, NIRB
Mr. David Hohnstein, NWB
Ms. Cathy Towtongie, NTI
Ms. Catherine Conrad, AANDC

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**Appendix A– May 2015 Correspondence from Hamlet of Pond Inlet and from QIA
regarding NPC Determination**

- i. Letter from Hamlet of Pond Inlet to NPC (May 6, 2015)
- ii. Letter from QIA regarding NPC Determination (May 2015)

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Hamlet of Pond Inlet
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Pond Inlet, Nunavut
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Nunavut Planning Commission
PO Box 2101
Cambridge Bay, NU
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May 6, 2015

Dear Members of the Nunavut Planning Commission

I am writing to you today to request clarification of the decision from the Nunavut Planning Commission's decision on the Mary River Project Phase 2. The Nunavut Planning Commission's decision was a surprise to Hamlet Council and some Community Members. I would like to request clarification on the decision, and how the decision came to that conclusion. There was a bit of a surprise when there was no discussion on this matter with community members. The Hamlet Council would like clarification on the matter, and how the Planning Commission came to this decision. There appears to be a misinterpretation on the Planning Commission's Decision and the views of some community members and outside organizations.

I would appreciate your quick and timely response in this matter, providing clarification to outside organizations that this response was provided and is the response from the Planning Commission and not the Hamlet Council of Pond Inlet.

Original Signed

Charlie Inuaruk;
Mayor, Hamlet of Pond Inlet

Cc: Leona Aglugak MP –
Peter Tatpuna Premier,
Bernard Valcourt, Minister
Ryan Barry, Executive Director N.I.R.B.
Joe Enook, MLA
Tom Paddon, President, Baffinland
PJ Akeeagok, President, QIA
CBC Radio



Sanikiluaq



Sanikiluaq

P.J. Akeeagok,
President



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Sanikiluaq

CC:

Cathie Towtongie, Nunavut Tunngavik Inc.

Peter Taptuna, Government of Nunavut

Johnny Mike, Government of Nunavut

Leona Aglukkaq, Member of Parliament

Ryan Barry, Nunavut Impact Review Board

Charlie Inuarak, Hamlet of Pond Inlet

Enookie Inuarak, Community Director

Appendix B
April- May 2015 Correspondence between NPC and Baffinland Regarding Land
Use Plan Amendment Option

- i. Letter from BIMC to NPC re NBRLUP Amendment Process (April 28, 2015)
- ii. Letter from NPC to BIMC responding regarding Amendment Process (May 5, 2015)
- iii. Further Response to Request for Explanation of Amendment Application Process
April 28, 2015 (May 19, 2015)



April 28, 2015

Mr. Hunter Tootoo
Chairperson
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, Nunavut X0B 0C0
Phone: 867-983-4625
Fax: 867-983-4626

Dear Mr. Tootoo,

Re: Clarification of NPC Processes and Timelines Regarding Potential Amendment to the North Baffin Regional Land Use Plan (NBRLUP)

Baffinland continues to review the Nunavut Planning Commission (NPC)'s conformity determination of April 8, 2015 (the Conformity Determination) with respect to Baffinland's Phase 2 Proposal and is considering its next steps. Since there is not a prescribed process for an amendment, Baffinland does not have a clear understanding of what changes to the NBRLUP would be required in order to bring Phase 2 shipping through ice into conformity, or of the administrative processes and timelines that NPC would follow in relation to such an application. As has been communicated to NPC, a lack of clarity in this area is of serious concern to Baffinland and has the potential to significantly affect our business.

During our discussions two weeks ago with you, senior NPC administrative staff and Sharon Ehloak (NPC Executive Director), you indicated that NPC could not provide any guidance on NBRLUP amendment process timelines and requirements until Baffinland provided questions in writing, as it was not possible for NPC to provide procedural guidance on hypothetical scenarios. We are therefore requesting by way of this letter some clarity from the NPC on an amendment process, should that option be pursued.

As timely feedback from the NPC on these matters is essential in Baffinland's decision making, Baffinland requests a written response to this letter (including NPC's response to the questions specified below) as soon as possible, and ideally on or before Monday, May 4, 2015.

A. Specifics of Potential NBRLUP Amendment

If Baffinland proceeded with an amendment application, we would want to ensure that the requested amendment would enable the NPC to issue a positive conformity statement in relation to the Phase 2 proposal. Based on the Conformity Determination, this could be achieved with an application under Part 6 of Article 11 of the NLCA and sections 3.5.11 and 3.5.12 of the NBRLUP. Specifically, section 2.2 of Appendix Q could be amended to add:

- *“The marine component includes trans-shipping during the open water season, including within areas in Eclipse Sound. The shipping season on the marine corridor may include shipping through open water and shipping through ice (excluding the months of April and May).”*
- *“Notwithstanding Sections 3.2.1 and 3.3.1 of the NBRLUP, transportation activities may proceed along the Milne Inlet Tote Road and marine transportation corridor provided such activities occur in compliance with all applicable laws and the terms and conditions of any required project certificate applicable to the activity. Regulatory authorities shall give careful consideration, through the project review process under Article 12 of the NLCA, to potential for impacts on opportunities for domestic harvesting and on wildlife and wildlife habitat, and the project certificate shall include any measures determined to be necessary to mitigate such impacts and to ensure Inuit values are conserved.”*

(collectively, the Potential Amendment).

- Can NPC confirm that the Potential Amendment wording would be acceptable, and that if these amendments to the NBRLUP were made, the Phase 2 project proposal would be in conformity with the NBRLUP?
- If NPC would prefer alternative wording, could NPC please provide Baffinland with proposed amendment wording that would result in a positive conformity statement?

B. NPC Amendment Process and Procedure

- Can NPC please advise of any NPC policies and procedures which would apply to the Potential Amendment application and process?
- Can NPC please provide a detailed overview which sets out the procedural steps that NPC would follow in processing the Potential Amendment application?

C. NPC Information Requirements

- Can NPC please provide the application form (if any) for the Potential Amendment?
- Can NPC please provide details about the technical and other information that would be required in order for NPC to start its process and to proceed to subsequent steps?
- When would the Potential Amendment application be deemed “complete” by NPC?

D. Anticipated Coordination with NIRB Processes

- Can NPC please confirm that the Potential Amendment application would proceed concurrently with NIRB processes (as occurred twice previously with respect to the Mary River Project and ERP)?
- Can NPC please provide details as to expected coordination between the Potential Amendment process and the NIRB process? For example, (if they are deemed necessary), would NPC hold joint meetings/hearings with NIRB and coordinate these with NIRB’s Article 12.8.2 hearings? The NBRLUP states that amendment would be a joint review process, and in 2009, NPC, NIRB and NWB agreed to a “coordinated process” for the Mary River project. Coordinated meetings would limit the potential

for confusion at the community level as well as provide an opportunity to enhance regulatory efficiency and reduce costs for all participants including NPC itself, NIRB, QIA, GN, the town of Pond Inlet, and others.

E. Timelines

- Can NPC please provide details as to the expected timelines that would apply to each procedural step as well as the overall amendment process timeline?
- What level of confidence can NPC provide that these timelines can be achieved?

Fundamentally, Baffinland supports Inuit land access rights and is committed to doing business in a way which supports the essential Inuit values the NLCA is designed to protect. Our respect for Inuit culture and the lands and water where we operate is at the core of everything we do and is clearly demonstrated in our Phase 2 proposal where shipping is not considered in April and May, and would be minimized in March and June.

Experience has shown that shipping through ice does not indelibly affect Inuit rights and land use. There are available practical measures which can be undertaken to ensure access and protection of wildlife, and shipping through ice regularly occurs in Nunavut (as an example, historically at the Nanisivik Mine, located within the current NBRLUP) and other areas in Canada. The Mary River Project Certificate includes detailed mitigation measures applicable to shipping through ice (via the southern route) which were developed following detailed consultation with Inuit. These measures were informed by careful consideration of Inuit traditional knowledge, comprehensive applicable shipping laws, and additional information gained through the NIRB review process. It is our belief that through continued consultations with the community, HTO and QIA, Baffinland and Inuit can find an acceptable way to move forward with Phase 2 shipping through ice. However, resolving the regulatory path is a key factor in continuing this essential dialogue. Currently Baffinland is unable to move the project proposal forward in a timely way into NIRB's environmental assessment process wherein the potential environmental and social impacts and potential mitigations can most appropriately be considered.

Thank you for your guidance on these matters. We appreciate the NPC's timely response to our request. It will greatly assist Baffinland in evaluating the options put forward by NPC in the Conformity Determination.

Please contact me or Oliver Curran directly if you have any questions.

Regards,

A handwritten signature in black ink, appearing to read 'Erik Madsen', with a stylized, cursive script.

Erik Madsen, Vice President
Sustainable Development, Health, Safety, and Environment

c.c. Sharon Ehaloak (NPC)
Brian Aglukark (NPC)

Navarana Beveridge (QIA)
Stephen W. Bathory (QIA)
Ryan Barry (NIRB)
Tara Arko (NIRB)
Ben Kogvik (NWB)
Phyllis Beaulieu (NWB)
Georgina Williston (DFO)
Catherine Conrad (AANDC)
Stephen Traynor (AANDC)
Tracey McCaie (AANDC)
Tom Paddon (Baffinland)
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I look forward to working with you and your team on the Mary River file. Please do not hesitate to contact me if you require any further information.



CC: Sharon Ehaloak (NPC)
Brian Aglukark (NPC)
Navarana Beveridge (QIA)
Stephen W. Bathory (QIA)
Ryan Barry (NIRB)
Tara Arko (NIRB)
Ben Kogvik (NWB)
Phyllis Beaulieu (NWB)
Georgina Williston (DFO)
Catherine Conrad (AANDC)
Stephen Traynor (AANDC)
Tracey McCaie (AANDC)
Tom Paddon (Baffinland)
Oliver Curran (Baffinland)



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Nunavut Planning Commission
Commission d'Aménagement du Nunavut

May 19, 2015

Erik Madsen, Vice President
Sustainable Development, Health, Safety & Environment
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Oakville, ON., Canada
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Via Email: erik.madsen@baffinland.com

Dear Mr. Madsen,

**Re: Further Response to Request for Explanation of Amendment Application Process
April 28, 2015**

The Commission wishes to provide a further response to your letter of April 28, 2015. The Commission is pleased to assist Baffinland Iron Mines Corporation (BIMC) in understanding the amendment application process. We trust the information provided below answers your questions, and would be happy to elaborate further if anything remains unclear.

A. Specifics of Potential North Baffin Regional Land Use Plan (NBRLUP) Amendment

The Commission's negative conformity determination identified the project proposal as not being in conformity with the conformity requirements in section 3.2.1 and 3.3.1 of the NBRLUP. Reference should be made to that decision in considering amendment applications. The procedure for amending the NBRLUP, which may include a public review would be designed to answer the question posed and the Commission cannot predetermine the outcome of that process. Furthermore, I note the Commission is unable to give an advance conformity determination or otherwise prejudge a project proposal based on an amendment to the land use plan that has not yet been proposed.

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B. Commission Amendment Process and Procedure

The Commission prepared an internal procedure for processing amendment applications titled *Amendments to Land Use Plans* in anticipation of the federal *Nunavut Planning and Project Assessment Act* (NUPPAA) coming into force. This procedure was approved in March 2015 and has not been used to date. Please find that internal procedure enclosed with this correspondence. The Commission would be happy to answer any questions you may have once you have reviewed the procedure.

C. Commission Information Requirements

Commission's internal procedure encourages a preliminary meeting to discuss information requirements with applicants. Also, note that NBRLUP does have specific information requirements for the development of a transportation corridor.

Once the Commission receives an application to amend a land use plan, it will determine if the application is complete. If the application is complete, the Commission will then consider the request and determine if a public review is required.

D. Anticipated Coordination with NIRB Process

The Commission suggests further discussion on this point, as we do not have enough information from BIMC to answer your question. The NBRLUP only contemplates a joint review by the NPC and the NIRB for a proposed amendment for the development of a transportation or communications corridor. Given the lack of clarity and information provided, the Commission is unable to answer the question of the NIRB's involvement if BIMC proposes both a transportation corridor amendment under the NBRLUP and an amendment to sections 3.2.1 and 3.3.1 of the NBRLUP under the NLCA.

E. Timelines

The attached internal procedure contains timelines that would apply to certain procedural steps. The Commission is also in receipt of other applications and is committed to processing all applications on a timely basis in the order in which they are received. Commission staff are prepared to work with BIMC on the specifics of this proposed plan amendment.

I note your letter closes with a restatement of your position on the Phase 2 proposal. BIMC had an opportunity to respond to the negative conformity determination recommendation (NCDR) and made submissions, which the Commissioners reviewed and considered when making their decision. For clarity, the "southern route" of shipping through ice, from Steensby Port where BIMC's proposed railway ends, is outside any approved land use plan, meaning a conformity determination for shipping through ice was never considered and the recent conformity determination on shipping through ice via Milne Port is not inconsistent with any previous conformity determination.

The Commission looks forward to working with you and your team on the Mary River file. Please contact me if you require any further information.

Respectfully,



Mr. Hunter Tootoo
Chairperson

CC: Sharon Ehaloak (NPC)
Brian Aglukark (NPC)
Navarana Beveridge (QIA)
Stephen W. Bathory (QIA)
Ryan Barry (NIRB)
Tara Arko (NIRB)
Ben Kogvik (NWB)
Phyllis Beaulieu (NWB)
Georgina Williston (DFO)
Catherine Conrad (AANDC)
Stephen Traynor (AANDC)
Tracey McCaie (AANDC)
Tom Paddon (Baffinland)
Oliver Curran (Baffinland)
Cathy Towtongie, President, NTI
Peter Taptuna, Premier, GN



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Nunavunmi Parnaiyiit
Nunavut Planning Commission
Commission d'Aménagement du Nunavut

Nunavut Planning Commission Internal Procedure

Amendments to Land Use Plans

March 2015

Effective Date:

Approved Revisions:

Effective Date of Revisions	Summary of Changes

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PURPOSE

The purpose of this procedure is to identify the approach the Nunavut Planning Commission (referred to herein as either the NPC or the Commission) will use for assessing an application for a Plan Amendment.

AUTHORITY

This procedure is made in accordance with the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (NLCA), which pursuant to section 3(1) of the *Nunavut Planning and Project Assessment Act* (NUPPAA) prevails over NUPPAA to the extent of any inconsistency or conflict between those documents.

Relevant NLCA Sections:

Section 11.6.1 Government, a DIO, or any person affected by a plan, may propose amendments to the plan to the NPC.

Section 11.6.2 The NPC shall consider a proposed amendment and, if it deems a review appropriate, review the proposal publically.

Section 11.6.3 Upon completion of the process outlined in Section 11.6.2, the NPC shall recommend to the Minister of Indian and Northern Affairs and Northern Development and the Territorial Government Minister responsible for Renewable Resources that;

- The proposed amendment be rejected in whole or in part; or
- The proposed amendment be accepted, in whole or in part.

Relevant NUPPAA Sections (Reproduced from the version current to February 4, 2015¹ for ease of reference in Appendix A):

58, 59, 60, 61, 62, 201(1)(a), 201(1)(i), 201(1)(j)

APPLICATION

This procedure applies when NPC staff receive a proposed amendment to a land use plan. Plan amendments are unique to each situation, and no standard amendment application form has been created. Because of this, pre-application meetings between the potential applicant and the NPC are encouraged.

The NPC retains the right to initiate Land Use Plan Amendments on its own prerogative.

DEFINITIONS

Unless the context requires otherwise, words and phrases in this procedure have the same meaning as in the NLCA or NUPPAA.

In this procedure:

Proposed Amendment means a proposal to amend an approved land use plan submitted to the Commission by Government, a DIO, or any person, including a corporation or other organization, affected by a plan, as well as any documentation and representations relevant to the proposal submitted to the Commission by the Amendment Applicant.

Applicant means a person who submits a proposed amendment to the Commission;

Public Registry means the Nunavut Planning Commission's online public registry at www.nunavut.ca

PROCEDURE

1 Flow Chart

A flow chart illustrating the Plan Amendment process is contained in Appendix B.

¹ Department of Justice Canada, Justice Laws Website, online: laws-lois.justice.gc.ca (accessed February 19, 2015)

2 Communications In Advance of a Proposed Amendment

- 2.1 Before submitting a proposed amendment, potential applicants are encouraged to contact the Executive Director to schedule an informal meeting, where the intent of the policies, objectives, goals, and land use plan will be discussed as they regard the applicant's conceptual proposal.
- 2.2 Fifteen days prior to the meeting, applicants are requested to provide information they may have, describing or explaining the proposed amendment, and the reasons of the proposed amendment to the plan to the NPC.
- 2.3 During this meeting the NPC staff will further advise the applicant on:
 - (a) the information required by the applicable land use plan;
 - (b) any other information or materials deemed necessary or appropriate by the NPC; and
 - (c) the need to provide translated versions of the proposed amendment materials. Submission of a proposal for amendment may be required in English, Inuktitut, Inuinnaqtun and/or French.

3 Submitting a Proposed Amendment

- 3.1 Following the initial informal meeting, the applicant may submit an amendment application. Fifteen (15) hardcopies with required translations, and one complete digital package of the application, must be submitted to the NPC for review by either:
 - (a) submitting the application in person at one of the NPC's regional offices; or
 - (b) submitting the application by mail to one of the NPC's regional offices.
- 3.2 Following receipt of a formal plan amendment application, within 7 days NPC staff shall review the application and determine if it is complete.
- 3.3 If the amendment proposal appears incomplete, the applicant may be asked to provide additional information, and the NPC will reserve the right to request further information.

4 Initial Consideration of Proposed Amendment

- 4.1 If the application is deemed to be complete by NPC staff, the materials will be uploaded to the NPC's Public Registry.
- 4.2 A letter from the Executive Director will notify the applicant that the proposed amendment has been received and is being assessed by NPC staff.
- 4.3 NPC staff may, at any time during the assessment of a proposed amendment make a written request to the applicant for additional information.
- 4.4 Proposed plan amendment applications must be received at least 60 days in advance of an in-person Commission meeting for it to be considered. If it is not received within that timeframe, the application will be considered at a subsequent Commission meeting.
- 4.5 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 NLCA.
- 4.6 The Commission may invite the applicant to be present at the meeting where the proposed amendment is being considered.
- 4.7 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.

5 Public Review of Proposed Amendment Considered Appropriate

- 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 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.

6 Commission Recommendation

- 6.1 If the Commissioners determines that a public review is not required under 4.6(a) or 4.6(b), at that time the Commission will recommend to the federal Minister, the territorial Minister and the designated Inuit organization, that the proposed amendment be accepted or rejected, in whole or in part.
- 6.2 Upon completion of a public review under 4.6(c), the Commissioners will recommend to the federal Minister, the territorial Minister and the designated Inuit organization, that the proposed amendment be accepted or rejected, in whole or in part.
- 6.3 The NPC will provide written reasons for its recommendation. The written reasons will also be provided to the applicant and posted on the NPC Public Registry.

7 Final Decision

- 7.1 The final decision shall be governed by the process described in Section 62 of NUPPAA (see Appendix A).

8 Publication

- 8.1 Any approved amendment to a land use plan will be made public by including it on the NPC's Public Registry, and posting notice of the amendment in a newspaper with territorial distribution.

Appendix A: Relevant NUPPAA Sections

"17. Inuit traditions

(2) A by-law or rule made... must give due regard and weight to the Inuit traditions regarding oral communication and decision-making.

"58. Factors to Consider

In exercising their powers and performing their duties and functions under sections 49 and 52 and subsections 54(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.

"59. Proposal for amendment

(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.

Consideration by Commission

(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.

Amendment proposed by Commission

(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.

Proposed amendment to be made public

(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. Revision of amendment

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. Submission of Proposed Amendment

(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.

Exception

(2) Despite subsection (1), the Commission may, following public review, withdraw a proposed amendment that it initiated.

"62. Decision — proposed amendment

(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.

Revised proposal

(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.

Decision — revised proposal

(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.

Coming into force

(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).

Publication

(5) The Commission must make any amendment to a land use plan public."

"201. Public registry — Commission

(1) The Commission must maintain a public registry that is made accessible to the public via the Internet, and the Commission must include, as soon as practicable, the following in that registry:

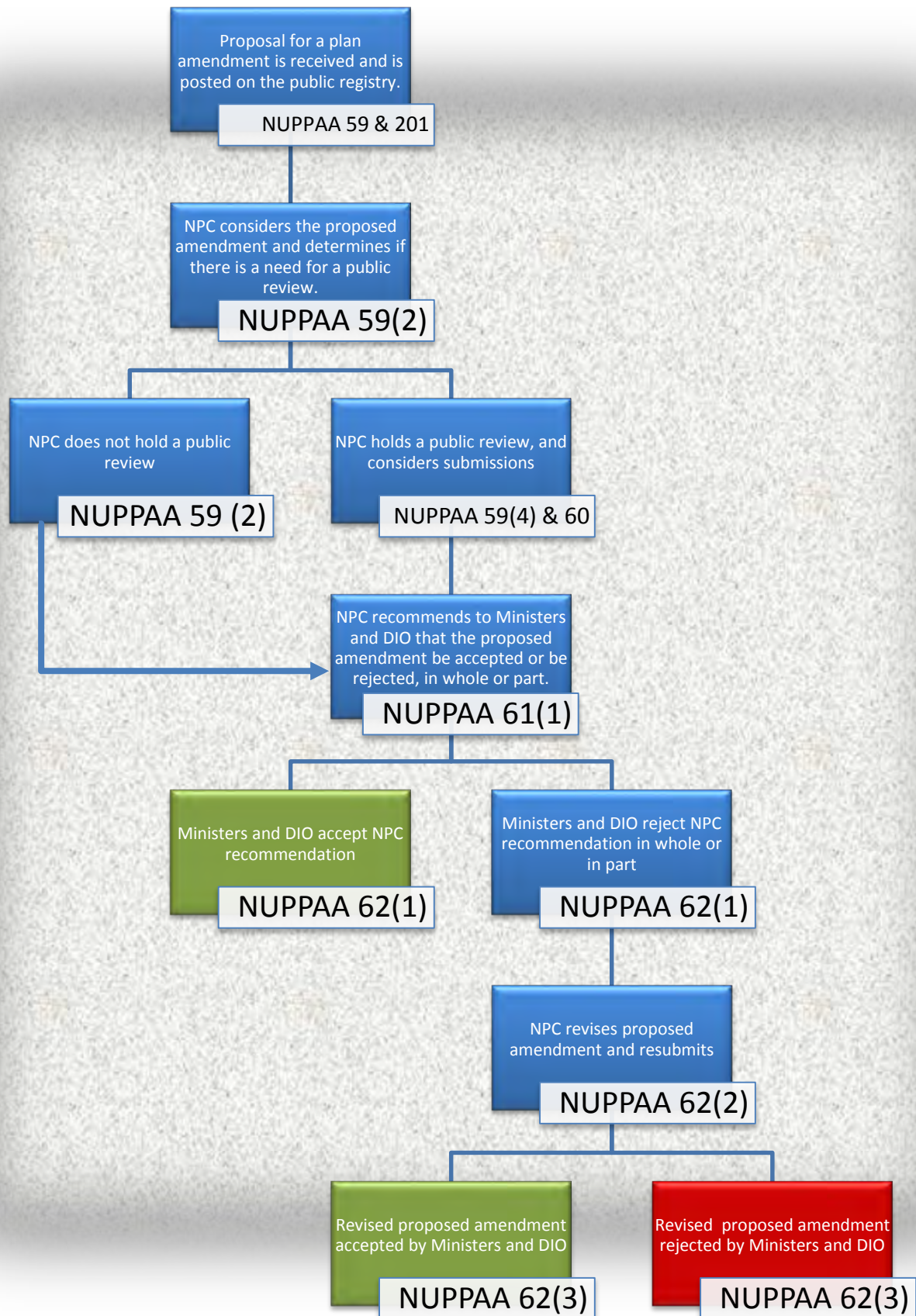
(a) reports referred to in paragraph 14(b), section 53 and subsections 61(1), 152(2) and (3) and 227(2);

...

(i) proposals for amendment of a land use plan made under subsections 59(1) and (3);

(j) amendments to a land use plan approved under subsections 62(1) and (3);"

Appendix B: Flow Chart of Amendment Process



Appendix C - Summary of Mary River Project Benefits

The Mary River Project has brought many benefits to the North Baffin Region, and will continue to benefit northern communities and the rest of Canada if Phase 2 proceeds. The Phase 2 expansion is an extremely important step in order to ensure the Mary River Project is economically sustainable. For a number of reasons, including planning, financing, and project economics, it is important for Baffinland to move forward with a NIRB review of Phase 2 under reasonable timeframes.

Baffinland's vision is to safely and efficiently identify and develop resources in the North Baffin Region, unlocking their wealth-generating potential to the benefit of all stakeholders. The Mary River Project is contributing to the development of infrastructure, skills training, employment and business opportunities for the people of Nunavut. The Project will also provide revenues to Inuit birthright corporations Nunavut Tunngavik Inc. (NTI) and the QIA, as well as to the Government of Nunavut.

As part of the Early Revenue Phase, the first shipment of ore will occur in the summer of 2015. This represents a significant milestone, and significant benefits are already flowing to the region. Baffinland has a substantial work force at the Mine Site and Milne Inlet, and is engaged in both construction and production activities.

Under its Inuit Impact and Benefit Agreement (IIBA) with the QIA, Baffinland provides Inuit employment and training, support for communities, and contracting opportunities. We have seen significant interest in employment from all five North Baffin Communities as well as communities in the remainder of Nunavut, particularly Iqaluit, and we will continue to build the skills and experience of our Inuit workforce. Baffinland is committed to maximizing contracting and subcontracting opportunities for qualified Inuit firms on all phases of the project. Through the IIBA Executive Committee, Baffinland and QIA will maintain a list of Inuit Firms that are expected to be qualified for contracts or subcontracts.

This vision has become a reality. The following statistics are from the Mary River Project in 2014:

Employment

- Over 200 Inuit Employees working on the Baffinland Project
- Total person days worked in 2014 = 220,972
- Total person days worked by Inuit 2014 = 47,260
- Percentage of Total Labour supplied by Inuit in 2014 = 21%

Training

- Approximately 3000 hours of training was received by Inuit employees in 2014

Contracts

- Approximate dollar spend to Inuit Firms in 2014 was \$64,000,000
- Contracts awarded to Inuit Firms to date is approximately \$178,000,000

If Phase 2 proceeds, these benefits will increase with the associated labour and contract demands. Increased mining production for Phase 2 will require a significantly larger workforce during construction and operations. 2 will see close to a doubling. Considering the substantial

benefits already recognized for the North Baffin Region and Canada as a whole, Phase 2 promises to substantially increase opportunities through sustained capacity building and career advancement for numerous Inuit within the North Baffin Region.

Also under the IIBA, Baffinland and the QIA established the Ilagiiktunut Fund, to which they jointly contribute. The fund is to enable Inuit of North Baffin to address community priorities by supporting such activities as community projects, youth and elder programs, family and community activities and educational incentives, among others. The first round of recipients of an aggregate total of just under \$750,000 was announced on February 4, 2015.

Baffinland emphasizes the importance of Phase 2 in moving the project to profitability and enabling these types of benefits to continue to flow. A Ministerial exemption from the NBRLUP will move the proposal a critical and timely step toward achieving this.

**Appendix D– October 2014 – April 2015 Documentation Relating to Phase 2 Application
for Conformity with NBRLUP, and NPC Determination**

- i. BIMC Phase 2 Conformity Application cover letter (Oct. 29, 2014)
- ii. BIMC Phase 2 Conformity Application – Project Description and NPC form (Oct. 29, 2014)
- iii. BIMC Response to Information Request from NPC (February 13, 2015)
- iv. NPC Negative Conformity Determination Recommendation (March 5, 2015)
- v. BIMC Response to Recommendation (March 16, 2015)
- vi. NPC Negative Conformity Determination cover letter (April 8, 2015)
- vii. NPC Negative Conformity Determination (April 8, 2015)



October 29, 2014

Mr. Brian Aglukark, Director, Implementation
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, NU, X0B 0C0

Dear Mr. Aglukark:

Re: Mary River Project Phase 2 Development and Application to Determine Conformity with the North Baffin Regional Land Use Plan

This letter is to notify the Nunavut Planning Commission (Commission) of Baffinland's Phase 2 Development of the Mary River Project (Phase 2). Phase 2 activities will occur within the area covered by the North Baffin Regional Land Use Plan (NBRLUP). Baffinland's Phase 2 Project Description is enclosed (Attachment 1), as well as a completed "*Nunavut Planning Commission Application to Determine Conformity with the North Baffin Regional Land Use Plan*." (Appendix 1 of the Project Description), Baffinland is writing to request that the Commission review the enclosed materials and confirm that Phase 2 conforms to the NBRLUP.

Background and Rationale for Phase 2

Baffinland obtained Project Certificate No. 005 for the Mary River Project in December, 2012. Due to the prevailing world economic climate since that time, Baffinland has recognized that proceeding with the Mary River Project will require a phased development approach. Accordingly, Baffinland obtained an amendment to Project Certificate No. 005 for the Early Revenue Phase ("**ERP**") in May, 2014, and is well on its way in regards to ERP implementation. The ERP enables Baffinland to mine and ship up to 4.2 million tonnes per annum (mtpa) of iron ore from Milne Port.

At this time, Baffinland recognizes that it will have to continue with the planned phased development approach of the Mary River Project and continue to defer the construction of certain project components already approved under Project Certificate No. 005. In particular, the construction and operation of the railway and Steensby Port will be delayed beyond 2015. The Company remains committed to the full development of a railway and Steensby Port as authorized under Project Certificate No.005. However, the capital investment necessary to initiate the railway phase of the Project exceeds \$5 billion. Under current market conditions, in order to obtain financing, lending institutions require that a proponent demonstrate the ability of their proposed project to generate cash flows and to demonstrate the quality and demand for their iron ore product.

In light of these market constraints, Baffinland has developed a plan for a second phase of development for its Mary River Project. Phase 2 will seek to optimize the use of infrastructure constructed for the ERP, and enable Baffinland to increase shipments of iron ore from Milne Port. The additional tonnage proposed for Phase 2 amounts to an increase of 7.8 mtpa to be transported from Milne Port along the northern shipping route.



Brief Summary of Phase 2

Phase 2 includes the following elements, beyond what is already approved within the ERP, which are described in more detail in the enclosed Phase 2 Project Description:

- Increased utilization of the Milne Inlet Tote Road, including increasing the trucking fleet and the twinning of bridges already constructed along the Tote Road;
- Increased utilization of Milne Port for shipping, and the addition of a second dock;
- The inclusion of two (2) ice management vessels (IMVs) for use at the Port, and the extension of the shipping season from June into March; and
- 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 to 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.

Phase 2 Regulatory Process

Baffinland recognizes that Phase 2 will require an amendment to the Project Certificate for the Mary River Project, and most likely an amendment to the Type A Water Licence. It is Baffinland's intention to provide an updated environmental impact statement (EIS) to NIRB for the activities proposed under Phase 2. Baffinland anticipates at this time that it will request NIRB to process the Phase 2 amendment application as a reconsideration of certificate terms and conditions under Part 8 of Article 12 of the Nunavut Land Claims Agreement following a similar NIRB process as to that followed with respect to the ERP.

Baffinland understands that Phase 2 will also require a conformity determination from the Commission. Article 11.5.10 through 11.5.12 of the *Nunavut Land Claims Agreement* provide for the Commission to make a conformity determination once it has received and reviewed a project proposal, and also provide for further steps that may be taken if the proposal is found not to be in conformity.

It is Baffinland's view at this time that the proposed Phase 2 of the Project is in conformity with the NBRLUP as amended in April, 2014, which includes a transportation corridor with a terrestrial component and a marine component. The Phase 2 transportation corridors will follow these approved routes. It is requested that the Commission make an expeditious determination of conformity of Phase 2 under the NBRLUP. This is so that all parties will have certainty on Phase 2 conformity before Baffinland determines its next steps, including but not limited to requesting the NIRB to commence its reconsideration of Project Certificate terms and conditions.

We look forward to receiving NPC's timely determination.



Sincerely,

A handwritten signature in black ink, appearing to read "Erik Madsen".

Erik Madsen, Vice President
Sustainable Development, Health, Safety & Environment

Encl. (1)

Attachment 1 - Project Description (includes *Nunavut Planning Commission Application to Determine Conformity with the North Baffin Regional Land Use Plan* as Appendix 1)

CC: Ryan Barry (NIRB)
Navarana Beveridge (QIA)

Baffinland Iron Mines Corporation
Mary River Project Phase 2
Second Amendment to Project Certificate No 005
Project Description
October 29 2014

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1. Introduction

This summary Project Description of Phase 2 is intended to provide the Nunavut Planning Commission, the Nunavut Impact Review Board, and other stakeholders a preliminary and conceptual description of the activities and infrastructure that is being proposed as part of Phase 2. A more detailed and final Project Description to support effects predictions will be submitted as part of an Environmental Impact Statement (EIS) as directed by the Nunavut Impact Review Board. Any adjustments to this Project Description would be reflected and addressed in the EIS to be submitted at a later date.

Project Certificate No 005 authorizes Baffinland Iron Mines Corporation (Baffinland) to mine up to 22.2 million tonnes per annum (mtpa) of iron ore from Deposit No. 1, to ship up to 18 mtpa of iron ore by railway and Steensby Port via the Southern Shipping Route (Foxye Basin – Hudson Strait), and, to ship up to 4.2 mtpa of iron ore by the Tote Road and Milne Port via the Northern shipping route (Milne Inlet – Eclipse Sound – Baffin Bay).

The initial phase of the development of the Mary River Project, the Early Revenue Phase, allows Baffinland to commence mining of Deposit No 1, to transport via the Tote Road and to ship up to 4.2 mtpa of iron ore from via Milne Port and the Northern shipping route.

Baffinland is proposing a subsequent phase (Phase 2) to the progressive development of the Mary River Project. Phase 2 would enable the Company to increase shipment of iron ore from Milne Port from 4.2 mtpa to 12 mtpa.

Baffinland remains committed to the full development of the Mary River Project as approved under Project Certificate No. 005 and therefore wishes to retain all authorizations already obtained that would enable the Company to proceed with the development of the railway and Steensby Port once financing is secured. Phase 2 will require an amendment to Project Certificate No. 005 to further facilitate the mining and transport of up to 30 mtpa of iron ore, with nominal shipment of up to 12 mtpa (7.8 mtpa above the already approved 4.2 mtpa under the ERP) of ore via Milne Port, and eventually, 18 mtpa of ore by railway via Steensby Port, for an expected duration of 21 years.

The implementation of Phase 2 will result in:

- Increased truck volume on the Tote Road (the North Baffin Regional Land Use Plan was amended for ore haulage activities in May 2014);
- An increase in shipping transits through Northern Shipping Route (the North Baffin Regional Land Use Plan was amended for marine transport of ore in May 2014), including transits through periods of ice;
- Additional berth capacity at Milne Port; and
- The establishment of a trans-shipping site in Eclipse Sound.

There will be no changes to the Potential Development Areas (PDA) at the Mine Site and the Tote Road corridor identified in the Mary River Project Final Environmental Impact Statement (FEIS 2012). A marginal increase of the PDA will be required in the marine environment at Milne Port to accommodate the second dock.

Baffinland anticipates completion of the following regulatory process will be necessary before Phase 2 may proceed:

- A conformity determination from the Nunavut Planning Commission (NPC) in relation to the North Baffin Region Land Use Plan (NBRLUP). The recent amendment to the NBRLUP recognizes the Tote Road, Milne Port and the Northern shipping route as a transportation corridor⁽³⁾. The completed “Nunavut Planning Commission Application to Determine Conformity with the North Baffin Regional Land Use Plan” questionnaire for this determination is attached for the NPC in Appendix 1.
- NIRB review for a second amendment to Project Certificate No. 005 to allow Phase 2 to proceed with construction, operation and closure.
- Potential amendment to Type A Water Licence 2AM-MRY1325, in order to proceed with scope of work on water crossing, increased water use and water discharge associated with Phase 2.
- DFO and Transport Canada authorizations for the second dock and expanded work on Tote Road water crossings (twinning of bridge crossings).

In order to enhance regulatory efficiency, Baffinland requests that any necessary public hearings associated with this proposal be conducted jointly by the NPC, NIRB and NWB, and where appropriate and practical, in writing.

This document provides an overview of Baffinland's Phase 2 development proposal for the Mary River Project.

2. Background

2.1 Resources

The North Baffin region has an abundance of high grade iron ore deposits. Deposit No. 1 has an estimated 632 million tonnes of iron ore (reserves and resources) based on a grade of approximately 65 percent. This deposit is one of nine known iron deposits within the Baffinland-held mineral claims and leases in the North Baffin Region. Given the abundance of iron ore resources, and the need to meet evolving market realities, the Mary River Project has the potential to exist as a multigenerational mining development that will necessitate a phased approach to development.

2.2 Challenges

With the abundance of high grade iron reserves in the North Baffin Region, the impediment to development is mainly financial and the perception of risk that is commonplace with Arctic development projects. Under current market conditions, the Company has not been able to secure financing for the full development of all the components of the approved project which represents a capital investment of over \$5 billion.

Iron ore mining and its related commodity market is a high volume, and typically, low margin operation. There are many producers in the world and as a result, the industry is extremely competitive. The ability to produce the ore and to provide a consistent, predictable and reliable ore supply are required in order to secure long-term supply contracts and successfully compete on world markets.

In some regions of the world where other iron ore projects are being developed or expanded (Brazil, South Africa and Australia) climatic conditions make it possible to operate and ship the iron ore product year-round. Infrastructure is a key component to the development of iron ore deposits. For many of these developments, existing transportation infrastructure (ports, roads, railway, and necessary utilities) was developed in conjunction with government-backed financing, loan guarantees or World Bank participation.

Although the iron ore resources of the North Baffin Region are plentiful, the development of the Mary River Project faces numerous challenges (lack of infrastructure, logistics, extreme climate, permafrost and, difficulty of access during the ice covered period) and an economy of scale is required to justify the large capital investment required for the project development.

2.3 Phased Development Approach Strategy

In January 2013 Baffinland indicated to the NPC and NIRB that the Company intended to proceed with the development of the Mary River Project in a phased approach due to the prevailing world economic climate⁽⁶⁾. The Company then proceeded with the request for an amendment to Project Certificate No. 005⁽²⁾.

Construction activities for the approved components of the Project began in May 2013 and Baffinland is currently implementing the Early Revenue Phase (ERP) of its Mary River Project. Completion of the ERP will enable Baffinland to mine and ship up to 4.2 mtpa of iron ore from Milne Port, commencing in the summer of 2015.

Given the realities of the economic and financial climate, Baffinland recognizes that the Company will have to continue with its planned staged development approach of the Mary River Project and continue to defer the construction of some project components already approved under Project Certificate No. 005. The construction and operation of the railway and Steensby Port will be delayed beyond 2015. The Company still anticipates the development of a railway and Steensby Port as described in the initial Mary River Project application⁽¹⁾ and authorized under the initial Project Certificate No.005. However, the capital investment necessary to initiate this phase of the Mary River Project still exceeds \$5 billion and under current market conditions (availability of acceptable financing), thus the Company will not proceed at this time with the railway and Steensby Port construction.

Faced with these difficult market constraints, Baffinland has developed a plan for a second phase of development for its Mary River Project (Phase 2) which would enable the Company to increase shipments of iron ore from Milne Port from the approved tonnage of 4.2 mtpa up to 12 mtpa. The shipments of 12 mtpa will be achieved with the use of two (2) self-discharging ice breaking Post Panamax ore carriers, which will extend the shipping season from June into March, along with the construction of a second ore loading dock. The ramp up to the full capacity of 12 mtpa will be accomplished over the course of several years.

Sections 3.0 and 4.0 of this document present a more detailed description of the incremental infrastructures and activities required for the implementation of Phase 2.

2.4 Future Development – Looking Forward

As stated, the railway and Steensby Port components of the Mary River Project are capital intensive and require approximately 4 years to develop. The Feasibility Study indicates that

for these two components, a minimum tonnage of 18 mtpa is required to justify the capital investment (in excess of \$5 billion). As noted, Baffinland wishes to retain all authorizations already obtained that would enable the Company to proceed with the development of the railway and Steensby Port once financing is secured. Hence, Baffinland requests that Project Certificate No. 005 be amended to include nominal mining rate of 30 mtpa and the transport and shipment of an additional 12 mtpa via the Tote Road and Milne Port (4.2 mtpa approved for the ERP plus an additional 7.8 mtpa for Phase 2).

Baffinland continues to anticipate full scale development of the Mary River Project and going forward, the Company will continue to seek economic ways of achieving this objective. Various scenarios to achieve this objective will be presented in the Phase 2 Addendum to the Final Environmental Impact Statement (FEIS). Should some of these options/scenarios prove economically viable, Baffinland will request further amendment(s) to Project Certificate No. 005 and any other necessary approvals.

While the implementation and operation of the ERP will demonstrate the viability of the operation, larger tonnages are required to generate necessary cash flows required for the ongoing progression and development of the larger Mary River Project. Phase 2 is a step in that direction.

2.5 Environmental Assessment and FEIS Addendum for Phase 2

Based on the estimated reserves and resources at Deposit No. 1, mining of this deposit at a nominal rate of 30 mtpa (7.8 mtpa for Phase 2, 4.2 mtpa for the ERP and 18 mtpa for the railway and Steensby Port) could extend to over 21 years. For the purpose of the initial Mary River Project proposal, a project life of 21 years was assumed as the mining period followed by a 3 year closure period and at least 5 years of post-closure monitoring to ensure closure objectives are satisfied.

The project environmental assessment will be updated as a second addendum to the FEIS to reflect the sustained production level of 30 mtpa at the Mine Site, which will be nominal mining rate once the railway and Steensby Port are operational. For the approved Mary River Project (22.2 mtpa)^(4,5), the potential development area (PDA) at the Mine Site, along with the infrastructure to be constructed for shipment of ore via the railway and Steensby Port considered a nominal mining rate of 18 mtpa with a design capacity of mine site infrastructure of 30 mtpa in order to allow for operational variability (refer to FEIS 2012, Volume 3)⁽¹⁾.

For the purpose of the Phase 2 FEIS Addendum, it will be assumed that financing for the Railway/Steensby Port components of the Approved Project (Project Certificate No. 005) will become available to begin engineering in 2020 and full scale mobilization at all Project sites in 2021. Construction of the railway component and Steensby Port, would be completed in 4 years to enable first ore shipments from Steensby Port in Q4 2024. The road haulage operation of 12 mtpa will continue as rail production commences.

As stated in previous Project Environmental Impact Statements, should Baffinland proceed with the development of other deposits in the area, the Company would submit additional information to the applicable authorizing agencies, as required.

3. Project Description - Scope of Phase 2 Development

While the ERP⁽²⁾ proposed nominal shipping of 4.2 mtpa from Milne Port during the open water season only, using market ore carriers, Phase 2 will seek to optimize the use of the infrastructure constructed for the ERP. In order to achieve this goal, further improvements to the installed infrastructure will be required as described in Table 3-1.

Table 3-1 Summary of Scope for Phase 2

Equipment Description	4.2 mtpa (ERP approved)	12 mtpa (Phase 2)
Mine Site		
Mine Crushing Stockpile Size	50,000t	150,000t
Accommodations (Operation)	210	500
Arctic Diesel	2 x 5ML	2 x 5 ML
Jet A	750,000L	750,000L
Trucking		
Ore Haul Trucks	22	75
Tote Road		
Tote Road Bridges	Single bridge	Twinned bridges
Milne Port		
Stockpile Size	Total: 3,200,000 t	Total: 6,000,000 t
Marine Diesel Storage & Distribution	2 x 100,000 L	2 x 10ML Tanks
Arctic Diesel	3 x 12ML 2 x 5 MLL	96ML
JET A	3 x 750,000L	4.5ML
Accommodations (Operation)	120	400
Shipping		
Tugs	2	4
Ice Management Vessel (IMV)	none	2
Polar Class Ore Carrier Self-discharging	none	2

Phase 2 philosophy is to achieve a increase of the shipment of up to 12 mtpa of ore based on using a second dock at Milne Port with the use of two Polar class Panamax self-discharging vessels which will operate continuously from June into March, and using market vessels during the open water shipping season of mid-July to mid-October.

Moving from the ERP capacity of 4.2 mtpa to Phase 2 capacity of eventually 12 mtpa requires the following actions:

- **At the Mine Site:**

Increasing ore production at the mine, increase mining fleet, crushing and mobile equipment. Build and expand transitional facilities for maintenance, fuel storage and workers accommodations. These facilities and activities are all approved under the current Project Certificate No. 005 which authorizes mining rates of up to 22.2 mtpa. Once the railway and Steensby Port are constructed and operational, the nominal mining rate would increase to 30 mtpa.

Amendment to Project Certificate No 005 required for Phase 2:

- ***Increased nominal mining rate to 30 mtpa.***
- **Tote Road**

Continue improvements to the Tote Road to improve road base and reduce steep grades (authorized under current Project Certificate). The construction of second bridges at each of the four bridge crossings will improve safe operation. Widening of the road will be required to necessitate the increased ore haulage.

With the increased transportation of ore on the Tote Road from 4.2 mtpa up to 12 mtpa, the ore truck traffic on Tote Road could reach 300 round trips per day (i.e. 75 trucks making 2 round trips each 24 period). Baffinland will seek to optimize the size of its ore haul trucks in order to reduce overall transits.

Amendment to Project Certificate No 005 required for Phase 2:

- ***Increased road haulage of iron ore corresponding to an increase in overall vehicle round trips up to 300 per 24 hour period.***
- **At Milne Port:**

Phase 2 will optimize the use of the facilities constructed for the ERP. This optimization will require expansion of some approved facilities such as the camp, sewage treatment, the maintenance facilities and the ore stockpile (increase from 3.2 Mt to 6 Mt), the fuel tank farm (an increase of 50ML), and additional equipment to ensure reliability of operation (mobile equipment, stackers, ship loader, etc.).

The two 100,000L marine diesel storage tanks approved under the ERP (not yet constructed) will be replaced by two 10 ML tanks by expanding the existing tank farm. Marine diesel is required for refueling of the tugs/IMVs. A fuel vessel will be used for storage of marine diesel until the on-shore facilities are constructed and operational. An additional dock will facilitate additional loading capacity of ore carriers.

Amendment to Project Certificate No 005 required for Phase 2:

- ***Handling and shipment of an additional 7.8 mtpa of iron ore (above the 4.2 mtpa already approved under the amended Project Certificate No. 005);***
- ***Additional ore dock;***
- ***Additional fuel storage (on land and on water); and***
- ***Additional accommodations.***
- **Shipping:**

For Phase 2, Baffinland will purchase two (2) purpose built Polar Class self-discharging ore carriers.

To achieve shipment of 12 mtpa, Baffinland will commission Ice Management Vessels (IMVs) to manage the ice build-up around the Milne Port, similar to that approved with the larger rail project at the Steensby Port.

Phase 2 will see the increase in total vessel traffic to and from Milne Port to an expected 150 voyages between early June into March (this includes ore carriers plus freight and fuel vessels).

Amendment to Project Certificate No 005 required for Phase 2:

- ***Marine shipment of an additional 7.8 mtpa through the Northern Shipping Route from June and into March for an expected 21 years.***
- **Trans-shipping:**

Phase 2 will see the introduction of a trans-shipping operation in Eclipse Sound during the open water season.

Amendment to Project Certificate No 005 required for Phase 2:

- ***Trans-shipping operation in Eclipse Sound during the open water season;***
- ***Seasonal Fuel storage at sea during trans-shipping operation.***

3.1 Mine Site

For the approved Mary River Project (22.2 mtpa), the potential development area (PDA) at the Mine Site (including the infrastructure to be constructed for shipment of ore via railway and Steensby Port) considers a design capacity of 30 mtpa for the mine infrastructure in order to allow for operational variability (refer to FEIS 2012, Volume 3)⁽¹⁾. Phase 2 will see an increase in nominal mining rate to 30 mtpa once the railway and Steensby Port are operational.

The Final Environmental Impact Statement (FEIS) considered a mining rate of 30 mtpa and cumulative effects assessment for production and shipment of up to 36 mtpa (FEIS 2012, Volume 9). Hence, Phase 2 development represents a gradual increase/implementation of mining activities towards the already approved production levels of 22.2 mtpa. All Phase 2 mining and transportation activities will remain confined within the potential development area (PDA) identified for the 2012 FEIS and are thus within the scope of the previously assessed and approved project.

3.1.1 Mining

The development of Deposit No. 1 is relatively straightforward and involves the mining of a hill crest with waste rock being hauled to the northwest with flat and uphill hauls. Ore will be delivered to primary crushers southwest of the deposit via a northeast main haul road. A significant volume of ore will be hauled downhill.

3.1.2 Mine Site Infrastructure

Phase 2 construction and operation will be designed, planned, executed and operated in a manner that does not interfere with the railway component of the Approved Project⁽⁵⁾.

The implementation of Phase 2 will see the enlargement of the ore stockpile to 150,000 tonnes, the addition of two mobile crusher trains, additional haul trucks, expansion of the mine maintenance facilities, an increase in accommodation facilities to house 500 employees. No additional approval for arctic diesel storage is anticipated. These transitional facilities are well within the scope of the previous environmental assessments.

As the objective is to gradually increase production to 30 mtpa, the transitional facilities installed for Phase 2 will gradually be replaced by the permanent facilities required to sustain the higher mining rate necessary for the railway operation. As stated in the 2012 FEIS, for the railway and Steensby Port operation, facilities will be designed and constructed for peak production levels of 30 mtpa.

3.2 Tote Road Upgrades

Phase 2 will provide a reliable, all-season transport system to move an additional 7.8 mtpa of iron ore from the Mine Site to the Milne Port (for a total of 12 mtpa). The transport system will also be used to support the Mine Site operation with the transport of fuel, supplies, equipment, waste and personnel (consistent with what was reviewed and approved in the FEIS and its Addendum).

In order to achieve these objectives, twinning of the bridges at all four (4) river crossings is required (one bridge for traffic in each direction). Selective geometric improvements to the Tote Road will be considered to increase traffic capacity, travel time efficiency and certainty, and longer-term maintainability. These improvements are also expected to have secondary benefits in terms of enhanced traffic safety, fleet availability and driver performance. Initial tote road improvements will consist of twinning of four single-lane bridges at larger water-crossings. Longer term improvements will include widening of the Tote Road.

Previously approved Tote Road improvements fall into the following major categories:

- Flattening of vertical grades,
- Extending culverts at all water crossings;
- Widening of the road;
- Improving stopping sight distances and sub-standard vertical crests; and,
- Increasing the radii (reducing the severity) of sub-standard horizontal curves.

Work carried out for the Tote Road improvement will remain in the transportation corridor.

3.3 Milne Port

Milne Port includes four main areas which require expansion/re-work in order to accommodate the scope for Phase 2. These include extension/placement of:

- A new lined fuel containment area to be constructed west of the ERP fuel tank farm for the addition of 50ML of arctic diesel storage, 750,000L of Jet A fuel, and two additional 10 million L marine diesel fuel tanks (approved under the ERP).
- Expanded ore stockpile area for 6 Mt of ore.
- Expanded camp and sewage treatment plant to accommodate peak construction work force of 500 persons (400 for operation phase).
- Additional service buildings.

3.3.1 Vessel Berths

The ore dock approved during the ERP and under construction during 2014 - 2015, is designed to provide a safe, efficient and secure deep-water berth for a range of vessels including Supramax, Panamax and Post-Panamax bulk ore carriers, as well as provide a means of support for the shiploaders and associated mechanical equipment used for loading these vessels. The ERP configuration of the ore dock (open cell sheet pile structure) is capable of accommodating all-season shipping. A second ore dock is proposed as part of Phase 2 in order to facilitate additional vessel loading capacity.

4. Shipping

4.1 Overview of Shipping Strategy

The expansion from the ERP to Phase 2 will include:

- Maximizing of the open water shipping by increasing the port utilization; and
- 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).

Phase 2 will expand the existing open water shipping window. This is described in more detail in Section 4.3.

Trans-shipping will be to Cape or Panamax ore carriers requiring one purpose built Polar Class self-discharging Post Panamax ore carrier for each market Post-Panamax ore carrier or two trips with the self-discharging ore carriers to a Cape ore carrier. During the winter season, it is expected that the self-discharging ore carriers will trans-ship to market Panamax vessels near Nuuk, Greenland. Trans-shipment in Greenland waters will be subject to Greenland regulatory approval.

As in the ERP, two tugs will be required to ensure efficient access and egress to the dock in open water. Tugs will also be required in Eclipse Sound to position the self-discharging ore carriers and market Capes or Panamax vessels. Seasonally, four tugs (or two tugs and two IMVs) in total will be required; two tugs at the dock facility and two tugs located at the trans-shipping site in Eclipse Sound.

4.2 Shipping Routes

The nominal shipping route will see all open-water transits stay in Zone 13 of the Canadian Zone/Date System (Z/DS). The Northern Shipping Route is shown in Figure 4-1.

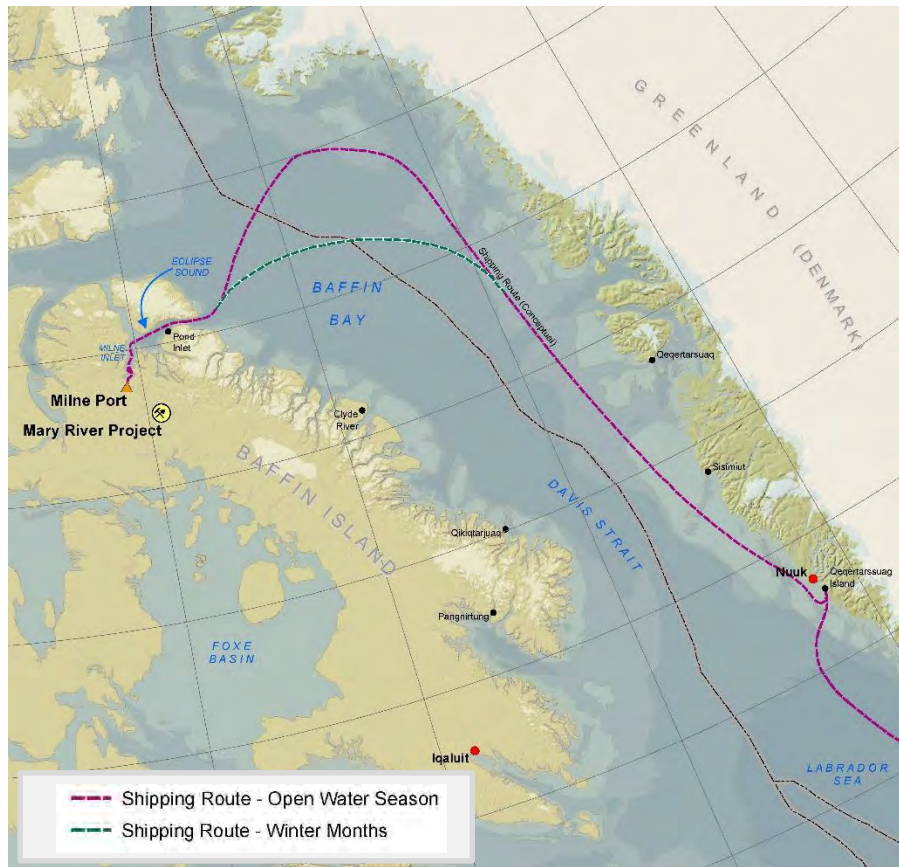


Figure 4-1 Shipping Route and Possible Trans-shipping Locations

4.3 Shipping Seasons

With the inclusion of purpose built Post Panamax self-discharging vessels Phase 2 envisions:

1. The shipping season will start in June (after the ice has degraded in quality) with the self-discharging vessels transiting to Greenland and trans-shipping into Cape vessels until late-July;
2. The open-water season will start with the ice class Supramax and Panamax vessels; then market Panamax, Post-Panamax and Cape vessels transiting direct to customer ports in Europe; and self-discharging vessels trans-shipping to Panamax or Cape vessels in Eclipse Sound; and
3. The self-discharging vessels transiting again to Greenland waters from mid-October into March where they will load into market Panamax or Cape vessels.

During periods 1 and 3, the self-discharging vessels will trans-ship in or around Nuuk, Greenland. From mid-July to mid-October, the self-discharging vessels will trans-ship onto market Cape or Panamax vessels in Eclipse Sound. Trans-shipping operations in Greenland waters will be subjected to Greenland regulatory approval.

4.4 Trans-shipping

Trans-shipping will occur in two locations; in Eclipse Sound during open water season and in Greenland waters prior to and after the Nunavut open water season. Therefore, Phase 2 proposes to utilize open water conditions in Greenland that can support trans-shipping from June to mid-July and from mid-October into March when ice conditions occur in Nunavut waters. Phase 2 trans-shipping activities are proposed to utilize open water in Eclipse Sound between mid-July and mid-October.

4.4.1 Trans-shipping Experience

Trans-shipping is regularly accomplished in numerous areas around the world and notably with Baffinland's parent company off the coast of Liberia (Figure 4-2) and at Pointe-Noire (Port authority of Sept-Isles) in the St-Lawrence River, Canada.

At Pointe-Noire (Port of Sept Isles), Canada, the trans-shipping of iron ore has occurred since 2010, where some 6 million tonnes is trans-shipped annually. At the ArcelorMittal Liberian operations, trans-shipping started in 2011 at ~2 million tonnes per annum and is currently at a nominal 4 million tonnes per annum. The second phase expansion of the Liberian mining operations will see expansion to 15 million tonnes per annum over the next few years, which will also be trans-shipped to Cape sized ore carriers destined to the Asian market.



Figure 4-2 Trans-shipping of Iron Ore at ArcelorMittal's Liberia Iron Ore Operation

4.4.2 Trans-shipping Operation

The purpose built self-discharging ore carrier design utilises a conveyor system rather than

grab un-loaders. The self-discharging vessel will load directly into the market Cape vessels. For the period of June to mid-July and mid-October into March, Baffinland's self-discharging ore carriers will make round trips between Milne Port to Greenland. Re-fueling of these ships will occur in Greenland. During trans-shipping in Eclipse Sound (mid-July to mid-October), Baffinland's self-discharging ore carrier will make round trips from Milne Port to the Eclipse Sound and there will be sufficient fuel storage on the vessel itself without needing to refuel at Milne Port.

The return trip from Milne Port to the Eclipse Sound trans-shipping site is expected to require 2 to 2.5 days while the return trip to the Greenland trans-shipping site will require between 8 to 13 days depending on weather and ice conditions along the voyage.

Of the 7 to 8 mtpa of ore that will be shipped during the open water season, Baffinland expects that 3 to 4 mtpa of ore will be trans-shipped in Eclipse Sound while the remaining tonnage will be shipped by market ore carriers loading directly at the Milne Port ore dock. Between 3 to 5 mtpa of iron ore will be trans-shipped in Greenland waters during the period of June to mid-July and mid-October into March, which corresponds to an effective shipping window of 250 days.

This operation will require up to 150 ore carrier voyages (depending on the size of the ore carriers) between June into March annually from Milne Port.

During the trans-shipment operation, up to five vessels will be active at the trans-shipment area in Eclipse Sound (one Cape size ore carrier, two purpose built self-discharging ore carriers, and two tugs). In addition, floating storage of fuel will be anchored nearby for refueling of the tugs.

4.4.3 *Trans-shipping Site Selection*

For trans-shipping, Baffinland requires a site with minimal tide, current, wave and wind effects. The closest possible locations are in Eclipse Sound during the open water season, and in Greenland waters, that are ice free year-round and would be the trans-shipping location from June to late July and mid-October into March.

To identify a viable trans-shipping site, potential trans-shipping locations require evaluation of meta-ocean data (current, wind, tide, wave) and confirmed safe anchorage. Suitable trans-shipping sites exist in both Eclipse Sound and of the west coast of Greenland.

4.4.3.1 *Eclipse Sound*

Baffinland has identified three potential anchorage locations that are sheltered and could be used for trans-shipment operations:

- South of Ragged Island
- South of Alfred Point, and,
- South of Emerson Island.

Based on current understanding of wind condition and ocean current conditions, the preferred trans-shipment site location is on the southerly side of Ragged Island on the border/margin of Eclipse Sound and Milne Inlet.

4.4.4 Purpose Built Polar Class Self-Discharging Post Panamax Vessel

The trans-shipping operation will be accomplished through the addition of two (2) Post Panamax Polar Class ore carriers with self-discharging capability. The self-discharging vessel would be similar to the Canada Steamship Lines CSL Atlas as shown in Figure 4-3. These vessels will require an ice breaking bow and additional power plant to supply sufficient power to break ice transiting into Milne Inlet. These two self-discharging vessels would transit between Milne Port and the trans-shipment locations where they would transfer their iron ore cargo to Cape size vessels.

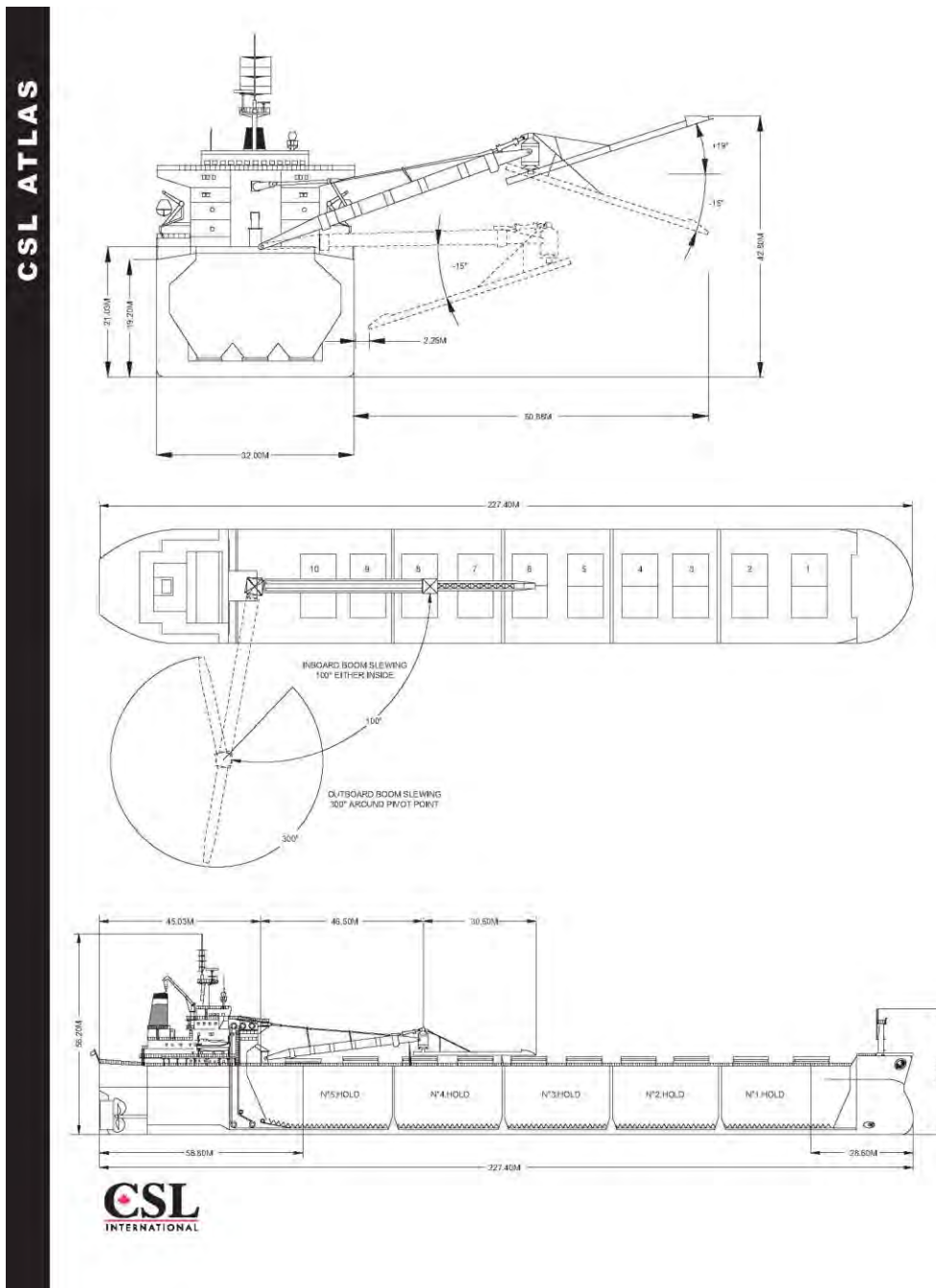


Figure 4-3 Canada Steamship Lines Atlas (self-discharging vessel)

4.5 Ore Carrier Vessel Types

Phase 2 will seek to maximize shipment of ore during the open water season (mid-July to mid-October). Vessels to be chartered will include:

- Supramax vessels
- Panamax vessels
- Post Panamax vessels
- Cape size vessels

4.5.1 Expected Number of Ship Voyages to Milne Port and Eclipse Sound

As with the ERP, modelled scheduling will see the use of ice class Supramax to develop a prompt start to the “open-water” shipping season in mid-July. From mid-July to mid-October, non-ice class market vessels will supplement purpose built self-discharging ore carriers trans-shipping to Eclipse Sound. Phase 2 will see the increase in total vessel traffic to and from Milne Port and or Eclipse Sound to an expected 150 voyages between early June into March (this includes ore carriers plus freight and fuel vessels).

4.5.2 Tugs

Four tugs are required to support berthing of the trans-shipping vessels in Eclipse Sound and at Milne Port (two tugs at each location). All tugs will be fitted for spill response capability as required in Baffinland’s existing Project Certificate.

4.6 Fuel Consumption and Refuelling Strategy

Ice management vessels (IMVs) will require land-based refuelling storage. Prior to the construction of marine diesel facilities at Milne Port, fuel for the tugs will be supplied by floating containment. A fuel vessel will be anchored in the vicinity of Milne Port to resupply the tugs operating at the Port, while a second vessel will be anchored in proximity of the Eclipse Sound trans-shipping site.

During the ice covered period, the purpose built self-discharging ore carriers will be refuelled and resupplied in Greenland. Polar Oil has a fuel storage facility at Faringham, some 20 km south from the expected trans-shipping site near Nuuk, Greenland. Crew changes may be either at Milne Port or in Nuuk, Greenland dependent upon logistics.

5. References

1. Baffinland, Mary River Project, Final Environmental Impact Assessment, February 2012
2. Baffinland, Mary River Project, Addendum to the Final Environmental Impact Assessment, June 2013
3. Nunavut Planning Commission, Notice of Approval of Amendment No. 2 to the North Baffin Regional Land Use Plan, May 16, 2014
4. Nunavut Impact Review Board, Public Hearing Report, Mary River Project: Early Revenue Phase Proposal (NIRB File NO. 08MN053), March 2014
5. Nunavut Impact Review Board, Amended Project Certificate No. 005, May 28, 2014

6. Baffinland, letter to NIRB, re: Request Amendment to Project Certificate No. 005 – Mary River Project, January 10, 2013

Appendix 1

Application to Determine Conformity with the NBRLUP

APPLICATION #

**NUNAVUT PLANNING COMMISSION
APPLICATION TO DETERMINE CONFORMITY
WITH THE NORTH BAFFIN REGIONAL LAND USE PLAN**

***All applicants for a project proposal shall comply with the requirements listed below.
The relevant sections of the plan are noted in each requirement.***

- 2. Environmental Protection:** s3.13.8: The applicant undertakes to prevent any new occurrences of pollution, garbage and contamination at the site of the development.

☒ Yes

No

- 3. Removal of Fuel Drums:** s3.13.8: The applicant undertakes to remove all drums safely from the site and dispose of the drums in a safe manner.

☒ Yes

No

- 4. New Site Restoration and Clean Up:** Appendix H, s1: The applicant undertakes to clean up the site and restore the site to its natural condition to the greatest extent possible.

☒ Yes

No

- 5. Old Site Restoration and Clean Up:** s3.13.2 and Appendix H, S1: The applicant undertakes to clean up the site and restore the site to its original condition to the greatest extent possible, including any work required due to the applicant's action prior to this application.

☒ Yes

No

- 6. Low-Level Air Flights:** Appendix H, s3: Will the applicant avoid all low-level flights?

☒ Yes

No

- i. If not, explain why such flights are or may be absolutely necessary.

Low level flights will be avoided to the extent possible and subject to safety considerations during poor weather and or visibility.

- ii. If such flights are or may be absolutely necessary, will they avoid disturbance to people and wildlife?

☒ Yes

No

Mitigation measures for aircraft flights have been assessed and approved under Project Certificate No. 005. All mitigations are subject to safety considerations.

iii. If not, explain why it is not possible to avoid such disturbance.

7. Caribou Protection Measures. s3.3.7 and Appendix I: Will the applicant comply with the Caribou Protection Measures outlined in section 3.3.7 and in Appendix I?

☒ Yes

No

9. Polar Bear Denning Areas and Walrus Haul-outs: s3.3.8: Will the applicant keep its activities away from any polar bear denning area or walrus haul-out?

☒ Yes

No

HERITAGE RESOURCES

10. Reporting of Archaeological Sites: s3.11.3 and Appendix H, s2 and s8: Will the applicant immediately report the discovery of all suspected archaeological sites to the Department of Culture and Heritage (GN)?

☒ Yes

No

MINING

11. Mining Development: s3.6.5: Is the proposal for mining development?

☒ Yes

No

If yes, include with the application a mine closure and restoration plan and the proof of complete financial guarantees for the abandonment and restoration of the site.

The Preliminary Mine Closure and Reclamation Plan which was Appendix 10G of the Final Environmental Impact Statement, has been approved by the Nunavut Water Board under Part B, Section 14 of the Water Licence issued June 12, 2013. Subsequently, the Interim Abandonment and Reclamation Plan is provided in the Addendum to FEIS as Appendix 10G. The Plan includes a closure and reclamation plan for all aspects of the Mary River Project including the mine site, and Milne Inlet, and is updated annually. The most recent update was submitted to the Nunavut Water Board in June of this year with Board approval pending.

The Water Licence also includes, as Part C, conditions applying to financial security under which the initial security amount of approximately \$40 million, to cover closure and reclamation of the current works and undertakings that are approved under Type 'A' Water Licence 2AM-MRY1325, is posted. Approximately \$39 million of the closure and reclamation is held under Commercial Lease, No. Q13C301, agreed to between Baffinland and the QIA as this liability occurs on Inuit Owned Land. An additional approximately \$1.25 million of security is included to cover closure and reclamation of the current works and ongoing exploration and undertakings under Type "B" Water Licence No. 2BE-MRY1421, another approximately \$146,000 under a second Type "B" Water Licence No. 8BC-MRY1416 for construction works related to the ERP, and approximately \$3.5 million to account for security associated with ore dock construction and monitoring in the event of unforeseen closure under DFO. The total security estimated to be required for the Project to date is therefore approximately \$45 million.

The Water Licence provides for an Annual Security Review as set out in Schedule C of the Water Licence and will require Baffinland to provide an updated Abandonment and Reclamation Plan on an annual basis along with a calculation of security for the highest level of reclamation liability for land and water for the upcoming year. Additional security will be posted annually as necessary.

Phase 2, if approved by the Nunavut Impact Review Board, will be a modification of the Mary River Project and the above requirements for the Abandonment and Reclamation Plan and for security will continue to apply to the Project as amended.

12. Negative Effects: s3.6.6: Has the applicant planned to minimize the negative effects of its activity on the environment?

Yes

No

Include with the application the mitigative measures developed.

The Project Certificate issued for the Mary River Project by the Nunavut Impact Review Board on December 28, 2012 (with subsequent amendment issued May 28, 2014) includes extensive requirements for minimizing the negative effects of the Project on the environment. The amended Project certificate contains 182 terms and conditions and requires the implementation of management plans for all aspects of the environment including water, vegetation, the aquatic environment, terrestrial wildlife and habitat, birds, the marine environment and marine wildlife and marine habitat.

13. Hunting Restrictions: s3.6.9: The applicant is informed of any special hunting restrictions that may apply to the area and will strictly enforce them at its mine sites and along transportation routes.

Yes

No

Term and Conditions No. 62 of the Nunavut Impact Review Board Project Certificate for the Mary River Project specifies that the proponent shall prohibit project employees from transportation of firearms to site and from operating firearms in project areas for the purpose of wildlife harvesting. These requirements are incorporated into the Environmental Management Plans for the Project and will continue to apply to the modifications proposed for Phase 2.

14. Carving Stone Deposits: *Appendix H, s9.* Will the applicant report any discoveries of carving stone deposits to the Qikiqtani Inuit Association?

☒ Yes

☐ No

A soap stone deposit at Mary River is a resource harvested by residents of North Baffin for carving purposes. Like all soapstone deposits, it is protected under the Nunavut Land Claims Agreement (NLCA), giving Inuit inherent harvesting rights. Figure 3-2.3 in Volume 3 of the FEIS indicates the location of the deposit.

MARINE AND TERRESTRIAL TRANSPORTATION

21. Corridor: *s3.5.11, s3.3.5.12:* Does the proposal consider the development of a transportation and/or communications corridor?

☐ Yes

☒ No

If yes, include with the application an assessment of alternate routes, the cumulative effects of the preferred route and options for other identifiable transportation and utility facilities.

As per the amendment to the NBRLUP No.2 in April, 2014, the transportation corridors associated with the Mary River project, including the shipping route north from Milne Port, and the existing Tote Road, are approved transportation corridors.

No new transportation corridors are required for Phase 2 of the Mary River Project.

22. Code of Good Conduct for Land Users: *Appendix H:* The applicant undertakes to adhere to the code of Good Conduct at all times.

☒ Yes

☐ No

I, Erik Madsen_(name of applicant), certify that the information I have given in this application is true and correct and hereby make the above undertakings which form part of my application for a project proposal within the meaning of the Nunavut Land Claims Agreement.

Date: 29 October 2014

Signature of Applicant: _____

A handwritten signature in black ink, appearing to read "K. Madson", is written above a horizontal line.

North Baffin Regional Land Use Plan
Appendix H
Code of Good Conduct for Land Users

1. The landscape of each camp and other land use sites will be restored to its original condition to the greatest degree possible. Water quality will be preserved and no substances that will impair water quality will be dumped in water bodies. When possible and feasible, old sites will be restored to the natural state.
2. All land users shall assist communities and government(s) in identifying and protecting archaeological sites and carving-stone sites, as required by law.
3. Generally, low-level flights by aircraft at less than 300 metres should not occur where they will disturb wildlife or people. If such flights are necessary, they should only take place after consultation with the appropriate communities. All land users are responsible for reporting to the land managers any illegal or questionable low-level flight.
4. All activities on the land will be conducted in such a fashion that the renewable resources of the area in question are conserved.
5. Whenever practicable, and consistent with sound procurement management, land users will follow the practice of local purchase of supplies and services.
6. Land users will establish working relationships with local communities and respect the traditional users of the land.
7. During the caribou calving, post-calving and migrating seasons, land use activities should be restricted to avoid disturbing caribou, in general, and activities will be governed more specifically by caribou protection measures such as those contained in Appendix I.
8. Artifacts must be left where they are found. All land users are responsible for reporting the location of, or any removal or disturbance of artifacts, to Department of Culture and Heritage.
9. The mining industry is encouraged to assist in identifying local carving-stone deposits and report any discoveries to the QIA. Industry is also encouraged to identify and report old waste sites that need to be cleaned up.
10. All land users shall obey the laws of general application applying to land use.



February 13, 2015

Mr. Brian Aglukark
Director, Implementation
Nunavut Planning Commission
P.O. Box 2101
Cambridge Bay, NU X0B 0C0

Dear Mr. Aglukark:

Re: Application to Determine Conformity with the North Baffin Regional Land Use Plan in connection with the Mary River Project Phase 2 Development Amendment Request 2AM MRY1325 – DFO 07-HCAA-CA7-0050 – NIRB

We are writing in response to Nunavut Planning Commission (NPC)'s letter of February 10, 2015, which requested Baffinland Iron Mines Corporation (Baffinland) to clarify points that are related to the completed questionnaire form Baffinland submitted to NPC on February 2, 2015 (Information Request No. 2). Specifically, NPC requested that Baffinland provide the following information:

“Please provide further information and details on how the BIMC's proposal adheres to section 3.3.1, and how it plans to ensure the values and concerns in the area affected (Eclipse Sound, Pond Inlet and North Bay Inlet) are conserved in accordance with section 3.2.1 and Appendix G. Specifically, what measures will be undertaken to maintain winter hunting access to Eclipse Sound, Pond Inlet and Bylot Island and to prevent damage to community travel routes to these and other to surrounding areas for seasonal hunting and transportation.”

Compliance with Section 3.3.1 and Section 3.2.1 of NBRLUP

Baffinland confirms it has reviewed and will comply with section 3.3.1 of the NBRLUP, which states:

“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.”

As per our submission of October 29, 2014 and February 2, 2014, Baffinland confirms it will follow the Code of Good Conduct in Appendix H of the NBRLUP. Further details as to measures Baffinland will undertake (subject to stakeholder consultation and the

Phase 2 review process) during Phase 2 operations to ensure the Code of Good Conduct is followed are attached to this letter at Appendix 1. As described in Appendix 1, Baffinland will base its compliance program on existing approved measures developed in respect of the Mary River Project and Early Revenue Phase and modify and or add to mitigation as required through stakeholder consultation and the NIRB review process.

In Information Request No. 2, NPC also references section 3.2.1 of the NBRLUP (set out in its entirety below):

“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. Those who regulate the areas shall ensure through the project approval process that these values are conserved.”

Baffinland is aware that Milne Inlet is identified as an “Essential Area” in Appendix G and will take the implications of this into account during Phase 2 planning, in particular with respect to the timing of operations, selection of travel routes, and adjustment of workplans. In order to further ensure conformity with section 3.2.1 of the NBRLUP, Baffinland will make the Nunavut Impact Review Board (NIRB), Nunavut Water Board, Fisheries and Oceans Canada aware of the land values and concerns (via this correspondence and also in the environmental impact statement addendum) with respect to Phase 2 activities and the Areas of Importance map in order to further ensure that these essential values will be considered and conserved through the project approval process.

Mitigation Measures to Maintain Winter Hunting Access and Prevent Damage to Community Hunting Routes

Vessel transits (shipping) through ice is a common activity in Canada and throughout Northern regions. Use of ice surface for other forms of transportation, such as by snow mobile, is also a common activity. In areas where winter shipping and snowmobile travel occur together, the issues to be addressed include public notification, safety marking and safe crossings if and where required. These safety considerations are discussed in more detail below.

- *Public Notification* - A system of notification is required to advise travellers of vessel travel schedules and the condition of the ships track associated with vessel transit. Interested parties are provided with timely information in an effective and accessible format. This information is useful for those planning to travel, in terms of deciding on timing and route selection.
- *Safety Marking* - In areas of concentrated traffic (both vessels and snowmobiles) measures can be required to place safety markings along the sides of the track

to alert snowmobile traffic. As well, signage can be employed to notify the location and condition of designated crossings.

- *Safe Crossing* - Track refreeze can occur over varying time frames, mainly dependent on air temperature. Inspections can determine the suitability of a refrozen track for snowmobile passage. Measures to facilitate passage can include grooming of the ice surface (removal of ridges and protruding ice pieces) and deployment of crossing structures (pontoon bridges) across the track to ensure safe passage.

The following brief summary provides illustrations of successful mitigation from northern projects involving transportation through and over ice.

- *Raglan Mine – Deception Bay, Nunavik* - As described in the Shipping and Marine Wildlife Management Plan (SMWMP), shipping occurs through all seasons for the Raglan Mine, via Deception Bay on the south side of Hudson Strait. Vessels transit approximately 25km of landfast ice in Deception Bay, crossing travel routes used by Inuit for hunting parties and inter-community visits. Provisions for ship track crossings include a contract arrangement with residents of Salluit who select a safely refrozen section of the track, groom the ice surface and place signage at the designated crossing location. The measures taken appear to be adequate to support travel volumes and routing employed by Nunavik residents.
- *Anaktalak Bay – Nunatsiavut* - As described in the SMWMP, shipping occurs through all seasons for the Voiseys Bay Mine on the north coast of Labrador, approximately 35km south of the community of Nain. Vessels transit approximately 70km of landfast ice in Anaktalak Bay to Edwards Cove, crossing travel routes used by Inuit for hunting, access to cabins and inter-community visits. An ongoing program of community consultation is used to inform people about each year's shipping plans and to receive feedback on past operations. Detailed information is provided to each community and travellers to advise on shipping movements, the placement of safety markings and the condition of safe crossing locations. A local contractor, operating from Nain provides services to place reflective markers along sections of the ship track, to patrol the track, and to establish safe crossings along travel routes. Track crossing locations include areas where natural conditions (ice thickness) are monitored as safe for snowmobile traffic. Crossings are groomed to facilitate traffic. At selected locations, and as needed where track re-freeze rates are slow, a pontoon bridge system is placed across the track to provide a safe running surface for snowmobiles and komatiks. The measures taken appear to be adequate to support travel volumes and routing employed by North Coast residents. Additionally, the community of Nain benefits from the local employment associated with the contract for track maintenance services.

- *Ice Roads* - Ice roads have been used throughout Northern Canada for years to supply communities and mining developments in the Northwest Territories have developed “ice” roads for resupply operations during winter conditions. They have operated safely the world’s largest industrial haul ice road for over 30 years. These roads transit freshwater bodies and are designed to support heavy loads. Ice profiling using modern equipment is used to ensure the ice is thick enough to handle the required weight to both construct and operate the road. Mobile equipment has been developed and modified to provide for ice thickening, to monitor ice thickness and bearing capacity, and to groom ice surfaces. A key consideration has been the imperative to ensure safe operations. The proven procedures and equipment developed in recent years for ice road construction and maintenance have application to the issue of establishing safe track crossings in northern marine environments.

The NIRB has issued Project Certificate No. 5 (NIRB Certificate) to permit Baffinland to proceed with the Mary River Project, with a subsequent amendment to account for activities associated with the Early Revenue Phase. The NIRB Certificate addresses requirements to address concerns, monitoring and mitigation associated with shipping through ice and open water, and includes specific conditions to address the issue of winter ship traffic and snowmobile travel. NIRB Certificate conditions relevant to the issue of winter shipping which Baffinland anticipates would continue to apply (updated to reflect specific Phase 2 activities) are set out in the attached table at Appendix 2.

Additionally, current plans required by the NIRB Certificate include relevant mitigation measures applicable to travelling through ice. The Shipping and Marine Wildlife Management Plan (SMWMP), developed in compliance with requirements established by NIRB for the preparation of the Mary River Project EIS, address specific issues related to shipping, including the issue of shipping through ice. The SMWMP, as per NIRB Guidelines provides background information on two mining projects considered relevant to the Mary River Project and the issue of shipping through ice – the Raglan Mine in Nunavik, and the Voiseys Bay Mine in Nunatsiavut. The results of that consideration were employed to inform the identification of mitigation and monitoring measures for Mary River Project shipping during periods of ice cover. The SMWMP was submitted with the Final Environmental Impact Statement (FEIS), the Early Revenue Phase Addendum to the FEIS, and most recently in Baffinland’s annual report to the NIRB. The SMWMP can be found on the NIRB’s public directory under the Mary River Project at the following link: [NIRB Public Registry- Mary River Project](#). The SMWMP will be reviewed with a submission of an environmental impact statement for Phase 2, and be updated to address outcomes of the Phase 2 review.

As summarized above, there are proven technologies and available procedures which demonstrate that winter shipping is feasible and compatible with snowmobile travel and related resource uses in Milne Inlet, Eclipse Sound, Pond Inlet and Bylot Island. Baffinland considers all of the above to be potential measures to maintain winter hunting access and to prevent damage to community travel routes during Phase 2. However, is

noted that prior to the commencement of Phase 2, mitigation measures will be finalized though the completion of the NIRB Project Certificate reconsideration process as well as extensive stakeholder consultations including discussions with the community of Pond Inlet and other North Baffin Communities and the Qikiqtani Inuit Association (QIA). During the Phase 2 approval process Baffinland will likely identify additional specific measures to assure safety of travellers and hunters related to proposed Phase 2 shipping schedules. Baffinland does not intend to limit potential mitigation measures to the above and will develop required mitigation in close consultation with communities, other stakeholders including the QIA. The details of design will be developed in a manner which incorporates local travel patterns and site specific knowledge of ice conditions, and, importantly, are implemented in a collaborative manner. Baffinland is committed to working with the community of Pond Inlet and other potentially impacted communities in the North Baffin region through processes outlined under the *Nunavut Land Claims Agreement* and in accordance with the requirements of the NBRLUP. Further mitigation measures may also be identified during the review of potential environmental effects that will be outlined in an environmental impact assessment as directed by the NIRB.

Should Phase 2 be permitted to proceed, Baffinland will continue to consult with communities and QIA on these matters during Phase 2 construction and operation.

We hope this information is fully responsive to the NPC's information request. Should you have any questions about this letter or its attachments, please do not hesitate to contact me or Oliver Curran directly. Baffinland wishes to reiterate its request that NPC issue its conformity determination with respect to Phase 2 as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Madsen', with a stylized, cursive script.

Erik Madsen, Vice President
Sustainable Development, Health, Safety & Environment

cc: Tara Arko, Nunavut Impact Review Board
Phyllis Beaulieu, Nunavut Water Board
Georgina Williston, Department, Fisheries & Oceans Canada
Stephen Williamson Bathory, Qikiqtani Inuit Association
Salamonie Shoo, Qikiqtani Inuit Association
Tracey McCaie, Aboriginal Affairs & Northern Development Canada
Stephen Traynor, Aboriginal Affairs & Northern Development Canada

**Appendix 1 – Confirmation of Baffinland Measures
to Conform with Code of Good Conduct**

<i>Appendix H – Code of Good Conduct for Land Users</i>	<i>Baffinland Measures</i>
1. The landscape of each camp and other land use sites will be restored to its original condition to the greatest degree possible. Water quality will be preserved, and no substances that will impair water quality will be dumped in water bodies. When possible and feasible, old sites will be restored to the natural state.	Baffinland will fully execute the approved Closure and Reclamation Plan and has secured these obligations by a letter of credit held by QIA and required under the Commercial Lease and Type A Water Licence. Once Phase 2 is approved, the Closure and Reclamation Plan and reclamation bonding will be updated accordingly.
2. All land users shall assist communities and government(s) in identifying and protecting archaeological sites and carving-stone sites, as required by law.	Baffinland has undertaken detailed archeological surveys of the Mary River site and has implemented site-wide procedures which ensure archeological sites and carving stone sites are protected.
3. Generally, low-level flights by aircraft at less than 300 metres should not occur where they will disturb wildlife or people. If such flights are necessary, they should only take place after consultation with the appropriate communities. All land users are responsible for reporting to the land managers any illegal or questionable low level flight.	Low level flights will be avoided to the extent possible and subject to safety considerations during poor weather/visibility challenged conditions.
4. All activities on the land will be conducted in such a fashion that the renewable resources of the area in question are conserved.	Baffinland undertakes all of its operations in a sustainable manner and in compliance with regulatory and Inuit (QIA) requirements.
5. Whenever practicable, and consistent with sound procurement management, landusers will follow the practice of local purchase of supplies and services.	The Impact Benefit Agreement addresses procurement matters described in this section and supports local purchase.

6. Land users will establish working relationships with local communities and respect the traditional users of the land.	The Impact Benefit Agreement addresses matters described in this section and supports local relationships. Baffinland also regularly consults with the communities regarding project matters.
7. During the caribou calving, post-calving and migrating seasons, land use activities should be restricted to avoid disturbing caribou, in general, and activities will be governed more specifically by caribou protection measures such as those contained in Appendix I.	The Mary River Caribou Protection Measures address these matters and will be applied during Phase 2.
8. Artifacts must be left where they are found. All land users are responsible for reporting the location of, or any removal or disturbance of artifacts, to CLEY.	As noted above, site specific policies have been developed which ensure compliance with this requirement.
9. The mining industry is encouraged to assist in identifying local carving-stone deposits and report any discoveries to the QIA. Industry is also encouraged to identify and report old waste sites that need to be cleaned up.	As noted above, site specific policies and agreements with QIA have been developed which ensure compliance with this requirement.
10. All land users shall obey the laws of general application applying to land use.	Baffinland has an extensive environmental management system in place which ensures compliance with all permits and approvals that are required in respect of the operation of the mine as well as laws of general application. This system will be updated to include Phase 2 components, once approved.

Appendix 2 – Relevant Current Project Certificate Terms and Conditions

<i>Topic</i>	<i>Project Certificate Term and Condition</i>
Safety markers in ice	175. The Proponent shall, in coordination and consultation with the Qikiqtani Inuit Association and the Hunters and Trappers Organizations of the North Baffin communities and Coral Harbour, provide updates to its Shipping and Marine Mammals Management Plan to include adaptive management measures it proposes to take should the placement of reflective markers along the ship track in winter months not prove to be a feasible method of marking the track to ensure the safety of ice-based travelers.
Public notification of ship travel	166. The Proponent should ensure through its consultation efforts and public awareness campaigns that the public have access to shipping operations personnel for transits into and out of both Steensby Inlet port and Milne Inlet port either via telephone or internet contact, in order that any questions regarding ice conditions or ship movements that could assist ice users in preparing for travel may be answered by Project staff in a timely fashion.
	164. The Proponent is required to provide notification to communities regarding scheduled ship transits throughout the regional study area, real-time data regarding ships in transit and any changes to the proposed shipping schedule.
	127. The Proponent shall ensure that communities and groups in Nunavik are kept informed of project shipping activities and are provided with opportunity to participate in the continued development and refinement of shipping related monitoring and mitigation plans.
	78. The Proponent shall update the baseline information for landfast ice using a long-term dataset (28 years), and with information on inter-annual variation. The analysis for pack and landfast ice shall be updated annually using annual sea ice data (floe size, cover, concentration) and synthesized and reported in the most appropriate management plan.

Monitoring of ship tracks through ice	<p>101. The Proponent shall incorporate into the appropriate monitoring plans the following items:</p> <ul style="list-style-type: none"> a. A monitoring program that focuses on walrus use of Steensby Inlet and their reaction to disturbance from construction activities, aircraft, and vessels; b. Efforts to involve Inuit in monitoring studies at all levels; c. Monitoring protocols that are responsive to Inuit concerns; d. Marine monitoring protocols are to consider the use of additional detecting devices to ensure adequate monitoring through changing seasonal conditions and daylight; e. Schedule for periodic aerial surveys as recommended by the Marine Environment Working Group; f. Periodic aerial surveys for basking ringed seals throughout the landfast ice of Steensby Inlet, and a suitable control location. Surveys shall be conducted at an appropriate frequency to detect change inter-annual variability; g. Shore-based observations of pre-Project narwhal behavior in Milne Inlet; h. Conduct landfast ice monitoring for the duration of the Project Operations phase, which will include: <ul style="list-style-type: none"> i. The number of ship transits that are able to use the same track; and, ii. The area of landfast ice disrupted annually by ship traffic; and i. Monitoring strategy focused on assessing and mitigating interaction <p>102. The Proponent shall ensure that routing of project vessels is tracked and recorded, with data made accessible in real time to communities in Nunavut and Nunavik. A summary of all ship tracks shall be submitted annually to the NIRB.</p>
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NEGATIVE CONFORMITY DETERMINATION RECOMMENDATION

APPLICANT:	Baffinland Iron Mines Corporation ("the proponent", BIMC)
PROJECT:	Mary River Project Phase 2 (Phase 2)
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)
DATE OF RECOMMENDATION:	March 5, 2015
SUMMARY OF RECOMMENDATION:	The project proposal is not in conformity with the requirements of the NBRLUP.

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1 Geographic Context

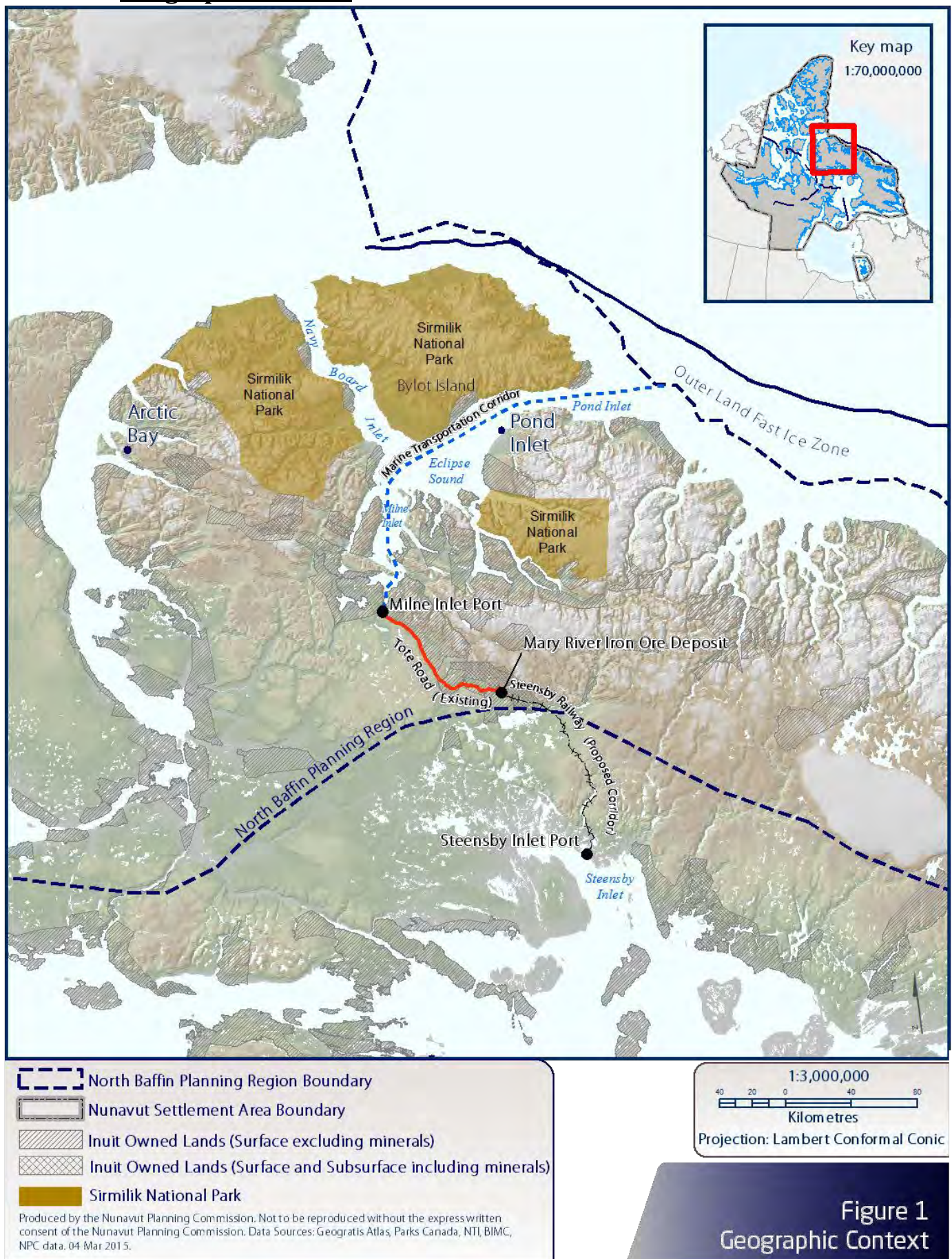


Figure 1
Geographic Context

2 Mandate of the Nunavut Planning Commission (NPC)

1. Land use planning plays a critical role in the development of Nunavut, and is distinct from the environmental impact assessment process. Section 11.3.2 of the Nunavut Land Claims Agreement (NLCA)¹ explains that land use plans “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.” Article 11 of the NLCA specifies in Section 11.1.2 that the word “‘land’ includes water and resources including wildlife.”
2. Under Section 11.4.1 of the NLCA, the NPC’s major responsibilities are 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.
3. 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:

¹ Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen In Right of Canada, Signed May 25, 1993 [NLCA].

- (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.”

4. Section 11.3.2 of the NLCA says that land use plans “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.”

5. Under Section 11.5.10 of the NLCA the NPC has a mandate to carry out conformity determinations of project proposals:

“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.”

6. 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;”

7. The NPC drafted two land use plans that were approved in June, 2000. The project proposal at issue is to be assessed for conformity with the NBRLUP, as amended. The NBRLUP contains conformity requirements, as well as broad principles, goals and objectives which guided development of the NBRLUP and which guide the interpretation of the conformity requirements.

3 Overview of the Mary River Project including Phase 2 Proposal

3.1 Approved Mary River Iron Mine

8. In 2012, the Baffinland Iron Mines Corporation ('BIMC', the Proponent) completed an application for development of an iron ore mine at Mary River, with ore to be shipped south by rail to a new port at Steensby Inlet, for year-round shipping of the ore through Foxe Basin and Hudson Strait.

3.2 Approved Early Revenue Phase (ERP)

9. On April 28, 2014, an amendment to the NBRLUP was approved for inclusion of a transportation/communications corridor which was needed to allow the BIMC to transport ore along an existing tote road, develop a dock at Milne Inlet, and ship ore to markets overseas to allow the proponent to implement the proposed ERP for the iron mine project at Mary River. The approved amendment for both the terrestrial and marine component of the transportation corridor is an insert to the NBRLUP titled Appendix "Q".

Summary activities of the ERP are:

1. Upgrade an existing tote road between Milne Inlet and the Mary River Iron Ore deposit in northern Baffin Island, to allow for the transport of approximately 4 million tonnes of ore per year by truck to the port.
 2. Build a port for loading of ore at Milne Inlet.
 3. Ship ore from Milne Inlet, through Eclipse Sound and Pond Inlet, during the ice-free season.
10. All correspondence and authorizations associated with the original Mary River project and ERP only contemplated shipping in the ice-free season in the area of Milne Inlet and Eclipse Sound. Specifically, on March 26, 2014 the NPC addressed a question to the BIMC on the issue of ice-breaking which read:

"Volume 9 of the ERP Addendum at section 1.4.4.1 says no ice breaking will occur. Section 4.5.1.3 of Volume 9 of the ERP Addendum, on the Introduction of Invasive Species, reads:

“During winter the full ballast is required to assist in ice breaking, so the entire amount of ballast water (approximately 185,000 m3) will be discharged at the ore dock.”

Two questions:

- a) First, is the ERP Addendum proposing winter shipping, or not?
- b) Second, will ice breaking occur as part of the ERP, or not?”

11. On March 27, 2014, the BIMC replied:

“... Firstly, the Early Revenue Phase is not proposing winter shipping. The statement that you have referenced in Section 4.5.1.3 of Volume 9 of the ERP Addendum is a typo referencing information relevant to Steensby Port. That information is layover from the FEIS and should not have been included in the addendum. The proposed shipping window for the Early Revenue Phase is 90 days, between the dates of July 15 to October 15 as described in Section 2.4.1 of the Project Description in Volume 3.

...“Secondly, ice breaking is not proposed as part of the Early Revenue Phase. For the Early Revenue Phase, Baffinland plans to utilise ore carriers that are limited in their operating window to the open water season that exists from mid-July to mid-October. Open water in the Arctic does not mean that no ice exists in the waters, however the ore carriers are incapable of ice breaking activities.”

12. The NPC has not previously been asked to consider ice breaking or year-round shipping in activities relating to the project proposal.

3.3 Phase 2 Project Proposal

13. On October 29, 2014, the BIMC submitted a request for a conformity determination with the NBRLUP regarding a proposed Phase 2 of the Mary River project. In their referrals of the project proposal to the NPC, the NWB on January 15, 2015 and the DFO on January 8, 2015 also provided copies of their respective applications as submitted by the proponent regarding the Phase 2 proposal for a conformity determination with the NBRLUP. This Phase 2 is similar to the ERP, except that:

- a. The amount of ore to be trucked and shipped annually through Milne Inlet Port will approximately triple.
 - b. Shipping increasing to approximately 150 total transits throughout the ice-free season and into the ice-breaking season as late as March.
 - c. During the ice-free season, in Eclipse Sound, ore would be trans-shipped from smaller vessels to larger oceanic freighters.
14. Details of the proposed shipping strategy in the afore-mentioned October 29, 2014 Project Description (see Tab 6b) are described here (quotations are from this document):
 - a. Section 3 (p. 7):

“the use of two Polar class Panamax self-discharging vessels which will operate **continuously** from June into March”
 - b. Section 3 (p. 9):

“For Phase 2, Baffinland will purchase two (2) purpose built Polar Class self-discharging ore carriers.

“To achieve shipment of 12 mtpa, Baffinland will commission Ice Management Vessels (IMVs) to manage the ice build-up around the Milne Port, similar to that approved with the larger rail project at the Steensby Port.

“Phase 2 will see the increase in total vessel traffic to and from Milne Port to an expected 150 voyages between early June into March (this includes ore carriers plus freight and fuel vessels).”
 - c. Section 4.1 (p. 11):

“The expansion from the ERP to Phase 2 will include:

 - Maximizing of the open water shipping by increasing the port utilization; and
 - 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).

...

“Trans-shipping will be to Cape or Panamax ore carriers requiring one purpose built Polar Class self-discharging Post Panamax ore carrier for each market Post-Panamax ore carrier or two trips with the self-discharging ore carriers to a Cape ore carrier. During the winter season, it is expected that the self-discharging ore carriers will trans-ship to market Panamax vessels near Nuuk, Greenland.”

d. Section 4.3 (p. 12):

“...Phase 2 envisions:

...

3. The self-discharging vessels transiting again to Greenland waters from mid-October into March where they will load into market Panamax or Cape vessels.”

e. Section 4.4.2 (p. 14):

“The self-discharging vessel will load directly into the market Cape vessels. For the period of June to mid-July and mid-October into March, Baffinland’s self-discharging ore carriers will make round trips between Milne Port to Greenland.

...

“The **return trip** from Milne Port to...the Greenland trans-shipping site will require between 8 to 13 days depending on weather and ice conditions along the voyage.

...

“...7 to 8 mtpa of ore ... will be shipped during the open water season... Between 3 to 5 mtpa of iron ore will be trans-shipped in Greenland waters during the period of June to mid-July and mid-October into March...”

“This operation will require up to 150 ore carrier voyages (depending on the size of the ore carriers) between June into March annually from Milne Port.”

[emphasis added]

15. Based on the information presented above, NPC understands the following:
 - a. Two ice-breaking vessels will be involved in ice-breaking, each making one return trip every 8-13 days.
 - b. The ice-breaking season will be between 150 days and 166 days. There are 150 days between October 15 and March 15, and 166 days between October 15 and March 31.
 - c. To calculate the highest possible number of ship passages, we divided the shortest ship passage return time (8 days) into the longest possible shipping season (166 days). This means a maximum number of return passages per vessel of 21 annually ($166/8 \approx 21$)
 - d. To calculate the lowest possible number of ship passages, we divided the longest ship passage return time (13 days) into the shortest possible shipping season (150 days). This means a minimum number of return passages per vessel of 12 annually ($150/13 \approx 11$). Hence total winter ship passages, with two vessels, through Pond Inlet and Eclipse Sound is calculated, based on the information supplied by BIMC, to range between 22 and 42 return trips in typical years. The NPC estimates that this corresponds to between 44 and 84 one-way passages.
 - e. Two IMV's will be operating continuously in Milne Inlet through the ice-breaking season.
 - f. Based on these calculations, during a high shipping season, the residents of Pond Inlet will see 3-4 ships go by their community per week, between October and March.

- g. Based on these calculations, during a low shipping season, the residents of Pond Inlet will see 1-2 ships go by their community per week, between October and March.
- 16. The Senior Conformity Officer has reviewed all of the information listed in Section 11 of this document, on page 30.
- 17. After an initial review of the project proposal, the Senior Conformity Officer determined that additional information was required from the BIMC to assess whether the winter shipping involved in the proposal met the conformity requirements of NBRLUP Section 3.2.1 and Section 3.3.1.
- 18. On February 10, 2015, the Senior Conformity Officer requested more information from the BIMC, in particular:
 - a. How the values and concerns in the area effected (Eclipse Sound, Pond Inlet, and Navy Board Inlet) will be conserved in accordance with NBRLUP Section 3.2.1 and Appendix G;
 - b. How the proposal adheres to NBRLUP Section 3.3.1; and
 - c. To list what types of measures would be undertaken to maintain hunting access to Eclipse Sound, Pond Inlet and Bylot Island and to prevent damage to community hunting travel routes to these and other surrounding areas for seasonal hunting and transportation.
- 19. The BIMC responded on February 13, 2015 providing examples of other mining companies that currently have shipping activity through ice. The proponent advised that its compliance program for Section 3.3.1 will be based on existing approved measures that will be modified or added to as required through stakeholder consultation and NIRB review process.
- 20. The BIMC also stated that in order to comply with Section 3.2.1, it would make the NIRB, NWB and DFO aware of the values to ensure they are conserved through the project approval process.

21. The proponent provided an example of successful mitigation related to shipping through ice used at the Raglan Mine, in Deception Bay, Nunavik. Vessels transit through approximately 25km of landfast ice in Deception Bay, crossing travel routes used by Inuit for hunting parties and inter-community visits. Measures taken include contract arrangements with residents of Salluit who select safely refrozen sections of track, groom the ice surface and place signage at designated crossing locations.
22. The other example provided was Ankalak Bay (Voisey's Bay Mine). Shipping occurs through all seasons on the North Coast of Labrador approximately 35km from the community of Nain, Labrador. Vessels transit through 70km of landfast ice, crossing travel routes used by Inuit for hunting, access to cabins and inter-community visits. Ongoing programs for community consultations are used to inform people about shipping plans and to receive feedback on past operations. The information is provided to community residents and travelers to advise on shipping movements, the placement of safety markings and the condition of safe crossing locations. Contractors from Nain provide services to place reflective markers along sections of the ship track and patrol the track which establish safe crossings along travel routes. Track crossing locations include areas where natural conditions (ice thickness) are monitored as safe for snowmobile traffic. Crossings are groomed to facilitate traffic. At selected locations, and as needed where track re-freeze rates are slow, a pontoon bridge system is placed across the track to provide a safe running surface for snowmobiles and komatiks.
23. BIMC also stated that ice roads have been used throughout Northern Canada for years to supply communities and mining developments in the Northwest Territories have developed ice roads for resupply operations during winter conditions and that they have operated safely.

4 NBRLUP Conformity Determination Process

24. Section 6.2 of the NBRLUP requires that a project proposal must first satisfy all conformity requirements, and at the second stage of the analysis if a type of land use has not previously been engaged in or contemplated, the proposal must also be consistent with the principles in section 6.3 and the goals and objectives in Chapter 3. The NBRLUP reads at Section 6.2:

“A project proposal conforms to this plan if:

- 1. it satisfies the “conformity requirements” identified in Chapter 3; and*
- 2. it involves land use of a type*
 - a) engaged in or previously contemplated by the communities and land use authorities in the North Baffin region, or*
 - b) not previously engaged in or contemplated, yet the proposal is consistent with the principles identified under heading 6.3.*

A proposal not meeting these criteria does not conform to the plan.”

5 NBRLUP Conformity Determination Stage 1: Requirements Related to Proposed Winter Shipping

25. At the first stage of the conformity determination process under section 6.2 of the NBRLUP, the NPC must determine whether a project proposal satisfies the conformity requirements. Two conformity requirements of the NBRLUP in particular apply to the proposed shipping through Milne Inlet and Eclipse Sound during the ice-breaking season, as described in the Phase 2 project proposal. Those sections of the NBRLUP are set out below, and analyzed in the following sections of this recommendation.
26. According to NBRLUP Section 3.2.1, in conducting a conformity determination the NPC must also consider Appendix G of the NBRLUP and the related cartographic information:

NBRLUP Section 3.2.1 (conformity requirement)

“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. Those who regulate the areas shall ensure through the project approval process that these values are conserved.”

27. According to NBRLUP Section 3.3.1, in conducting a conformity determination the NPC must also consider Appendix H to, among other things, protect the opportunities for domestic harvesting:

NBRLUP Section 3.3.1 (conformity requirement)

“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.”

28. The principles, goals and objectives contained throughout the NBRLUP are relevant to the interpretation of conformity requirements so that the NPC can discern what those conformity requirements are intended to achieve. As such, additional relevant text from the NBRLUP is set out below for ease of reference.
29. The NBRLUP explains the importance of wildlife to Inuit as follows in Section 2.1.5 (p. 16):

“The North Baffin area is also one of the most important marine mammal habitats in the eastern Arctic. Eighty-five percent of North America’s narwhal, and 40% of its beluga whales, in addition to large populations of ringed, harp and bearded seals, are found here. Small

colonies of walrus are present, and the endangered bowhead whale summers in the southern part of the region.

...

"The abundance of marine and terrestrial wildlife has provided food, clothing and shelter for Inuit and their ancestors for several thousand years. Inuit continue to rely on renewable resources for these things, as well as for their cultural and economic well-being. This reliance forms the basis of a profound relationship with the land."

30. The NBRLUP states in Section 3.2:

"The NPC has developed a definition of "sustainable development" that reflects northern priorities:

"Sustainable development is defined generally as the management of human relationships to the natural environment in such a way that economic, social and cultural needs are met and ecological processes and natural diversity are maintained.

Sustainable development considers the wellbeing of social, ecological and economic systems and recognizes that quality of life depends upon all these. This understanding leads to an integrated approach to planning, decision making and monitoring."

31. The NBRLUP identifies the following objectives in Section 3.3 (p. 35):

- *"TO PROTECT THE OPPORTUNITY TO USE WILDLIFE FOR THE NUTRITIONAL, ECONOMIC AND CULTURAL NEEDS OF THE PERMANENT RESIDENTS.*
- *"TO ENSURE THAT THE EFFECTS OF ANY LAND USE ACTIVITY DO NOT THREATEN THE SUSTAINABLE WILDLIFE HARVEST."*

32. The NBRLUP states in Section 3.3:

"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.

"Although harvesting is a part-time activity for most people, production per hunter is high. The average hunter in the Arctic takes 1000 to 1500 kilograms of meat and fish each year

...
"Communities, government and a number of national interest groups have identified as a major issue the need to ensure the wise use of all wildlife species and habitats in the region so that wildlife can be used by present and future residents of the region."

33. Section 3.5 of the NBRLUP states that:

"Communities, in particular, are concerned about the adverse effects of shipping on harvesting activities. Concerns include:

- inconvenience and risk to hunters crossing ship tracks;*
- loss of equipment through ice broken by ships; and*
- premature break-up of fast ice and the floe edge, which are essential to the spring harvest.*

Although only a limited number of ship transits are made at present, year-round shipping, with an increased number and frequency of transits, could intensify any adverse effects." (p.44)

5.1 Specific Pertinent Ecological Resources of Value

34. The following 5 sections describe particular resources and locations of value

that require reliable and long-term access over ice.

35. Seal Habitat Areas of Winter concentration NBRLUP Section 2.1.5 (p.17):

Map shows concentrated habitat areas important to seals. Specifically the area in Milne Inlet is an important habitat area for seals during the winter months.

36. Seal Harvest Winter NBRLUP Section 2.1.5 (p. 19):

Map shows locations of seal hunting for North Baffin residents during the winter. Specific to Pond Inlet residents, the entire Eclipse Sound, Navy Board Inlet, Pond Inlet, Milne Inlet, area surrounding Bylot Island is identified.

37. North Baffin Harvesting cycles NBRLUP Section 2.1.5 (p. 20):

Figure 3 shows the harvesting cycle of Inuit of the North Baffin residents. Showing hunting activities of its residents for Caribou, Muskox, Walrus, Narwhal, Beluga and Polar bear during the winter months between January to the summer months of August.

38. NBRLUP Section 2.1.5 (p. 20):

“Caribou, seal and Arctic Char are taken year round as staple food sources. Spring is particularly important time, as hunters travel to the floe edge and the shore leads, where seal, beluga, narwhal and polar bear concentrate. Entire families participate in these spring hunting trips, and some also move to outpost camps for the summer”.

39. NBRLUP Section 2.1.8 (p. 22):

“In addition to its cultural and social importance, the traditional harvest of the renewable resources contributes significantly to the regional economy. The dollar value of the harvest is calculated as the cost of replacing country foods with store-bought products. “

6 NBRLUP Conformity Determination Stage 1: Analysis of the Phase 2 Project Proposal

6.1 Conformity Requirement 3.2.1

40. The Conformity Officer must determine if the Phase 2 project proposal conforms to Section 3.2.1 of the NBRLUP. Milne Inlet, Eclipse Sound, Pond Inlet, and area around Bylot Island are all listed in Appendix G and the Area of Importance map, as “Essential Areas”, for a variety of ecological and socio-economic reasons. Essential Areas are defined in the NBRLUP as being:

- a) *“The area is essential to the community for hunting, fishing and trapping. The community cannot survive without these areas.*
- b) *The area is essential to the biological productivity of the wildlife because it is habitat:*
 - *that wildlife would neither be able to survive without, nor be able to find an alternative are where they could survive, e.g. calving areas, nesting areas, polynyas, migration routes, etc.;*
 - *that supports rare, threatened or endangered species or concentrations of wildlife;*
 - *that is scarce.*
- c) *The area is protected by legislation or has been proposed for formal protection by government, other agencies and/or communities. In most cases these areas have a high diversity of values and meet more than one of the above criteria.”*

41. The NPC, when considering new or expanded activities located inside an Essential Area must take into account values as described for that particular Essential Area. Where Appendix G says: *“The community cannot survive without these areas”*, it is implied that the community cannot survive without access to those Essential Areas, even if the Essential Areas themselves are not being negatively affected. The proposed expanded shipping activity from June into March that is associated with Phase 2 has the potential to significantly disrupt year round access for the community residents of Pond Inlet who rely on the ice surface inside the “Essential Area # E20” to travel to and from

recognized hunting locations around Bylot Island, Navy Board Inlet and Pond Inlet.

42. It is important to note that the maps, figures, and explanations listed above in section 5.1 of this recommendation are also relevant to Appendix G of the NBRLUP, as they identify resources of value which Section 3.2.1 of the NBRLUP requires land users to adjust their work plans to conserve. These include the essential seal habitat at Milne Inlet during the winter months, seal harvesting throughout Eclipse Sound, Navy Board Inlet, Pond Inlet, Milne Inlet, and the area surrounding Bylot Island, the timing of harvesting cycles for various wildlife, and the significance of hunting these resources to families, Inuit culture and society, and the regional economy. Appendix G of the NBRLUP incorporates the Lancaster Sound Regional Land Use Plan, relevant portions of which were provided to the BIMC on February 10, 2015, which also identifies polar bear habitat and denning areas in the area around Bylot Island, and section 2.1.5 of the NBRLUP identifies the importance of hunting polar bear at the floe edge and the shore leads. According to traditional Inuit knowledge, floe edges are easily affected by changes in the environment, and regular ice breaking over the winter would pose a significant risk of affecting hunting safely in the Essential Area. The Phase 2 proposal includes breaking ice continuously from October to March in Milne Inlet with two Ice Management Vessels, and shipping ore from October to March from Milne Inlet, when that area is important seal habitat. Milne Inlet is intended to be used for harvesting by local hunters. BIMC's proposed uses are inconsistent with the conformity requirement that these wildlife and harvesting values be conserved under Section 3.2.1 of the NBRLUP.
43. The BIMC proposes to satisfy the conformity requirement of Section 3.2.1 of the NBRLUP at a later time through the NIRB impact assessment process and approval process by taking the Essential Area in Appendix G into account when planning the timing of operations, selecting of travel routes, and adjusting workplans. The Senior Conformity Officer notes future planning

steps proposed by the BIMC that will take the conformity requirement into account. However the proposed steps cannot lead to a positive conformity determination with the NBRLUP as the project itself proposes activities in places and at times that do not conserve the values identified in Appendix G. For example, while community residents may be able to time departures from the community to coincide with ship track refreezing, it is not clear how the BIMC would be able to ensure that residents who hunt in the Essential Area during winter months are able to safely return to the community at all times without having to wait for ship tracks to refreeze, such as in the event of an emergency or during a winter storm.

44. The Senior Conformity Officer recommends that the Commissioners give the project proposal a negative conformity determination on the basis that it does not satisfy the conformity requirement at section 3.2.1 of the NBRLUP.

6.2 Conformity Requirement 3.3.1

45. The Conformity Officer must determine if the Phase 2 project proposal conforms to Section 3.3.1 of the NBRLUP:

“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.”

46. In order to comply with Section 3.3.1, the BIMC has agreed to follow the Code of Good Conduct, and advised that it will base its compliance program on “existing approved measures developed in respect of the Mary River Project and Early Revenue Phase and modify or add to mitigation as required through

stakeholder consultation and the NIRB review process.” It should be noted that the mandate of the NPC is to implement terms of the approved NBRLUP, which precedes the Impact assessment process (NIRB process). As agreed to by government, planning partners, and residents of the North Baffin Planning Region at the time of the approval of the NBRLUP, proposed projects must first conform to the NBRLUP before proceeding to an impact assessment process.

47. Section 3.3.1 requires land users to follow Appendix H, The Code of Good Conduct. Although Section 3.3.1 might be read to say that following Appendix H is intended to completely “achieve the ends” of Section 3.3.1, because Appendix H identifies several different requirements than Section 3.3.1 the NPC interprets Section 3.3.1 and Appendix H as complimentary to one another and interprets them together and consistent with the purpose of the NBRLUP as set out in section 11.3.2 of the NLCA. For example, Appendix H paragraph 6 requires land users to “establish working relationships with local communities and respect the traditional users of the land”. When read together with section 3.3.1 it is clear that for land users to “respect the traditional users of the land” they must avoid “damage to community travel routes.”
48. The residents of the Hamlet of Pond Inlet need access by ice to harvesting sites on and around Bylot Island, Pond Inlet, Navy Board Inlet, Milne Inlet and surrounding areas. Although the NBRLUP does not explicitly identify these travel routes, it does repeatedly note the importance of year round harvesting in the region. Section 2.1.4 notes that ice is no longer considered safe for travel beginning in July (at the time of approval of the NBRLUP in June 2000). The uncertainty of whether there will be safe ice conditions for return to the community may also significantly influence behavior of hunters and harvesters.
49. The mitigation measures that BIMC is proposing to develop in order to maintain winter hunting access and prevent damage to community hunting

routes are based on experience at other northern mines where the number of winter ship transits is less than 4². The Phase 2 proposal involves 150 transits between early June into March of each year. Although it is not specified by the Proponent how many will involve ice-breaking, it is the NPC's understanding that there will be typically between 44 and 84 ship one-way passages annually that involve ice-breaking. Based on the experience with ice-breaking at other northern mines, ship tracks generally take at least 24 hours before they can be safely crossed by snowmobiles.³ This experience, combined with the large number of ship transits associated with the Phase 2 proposal could realistically create long-term unsafe ice surface which would damage community travel routes and negatively impact year round harvesting for residents.

50. Residents of Pond Inlet who rely on the ice surface inside the "Essential Area # E20" require safe travel routes to and from recognized hunting locations around Bylot Island, Navy Board Inlet and Pond Inlet. The proposed expanded shipping activity from June into March that is associated with Phase 2 has the potential to significantly disrupt year round access for the residents of Pond Inlet to these areas. The shipping route from Milne Inlet to the mouth of the Pond Inlet is approximately 200km long. All ice-based routes to the north and west of the Hamlet of Pond Inlet will be affected. Although BIMC proposes future consultation measures, it has not demonstrated for the purpose of the NPC's conformity determination that it will adequately protect and respect the traditional users of the land as the project proposal involves regularly damaging community travel routes.

51. The Senior Conformity Officer recommends that the Commissioners give the project proposal a negative conformity determination on the basis that it does

² Shipping and Marine Wildlife Management Plan, Mary River Project, TAB 24

³ Shipping and Marine Wildlife Management Plan, Mary River Project, TAB 24

not satisfy the conformity requirement at section 3.3.1 of the NBRLUP.

7 Summary Conformity Determination Recommendation: Stage 1

52. The mandate of NPC in this case is to implement the NBRLUP. The Proponent must provide sufficient information for the NPC to determine whether NBRLUP conformity requirements, in particular Sections 3.2.1 and 3.3.1 are satisfied. The experience of other mines in other jurisdictions, using different scales of shipping, is not sufficient to this end. The proposed number of ship transits during winter months for Mary River Phase 2 will be far more numerous than that with other mines referenced by the proponent; the proposed length of ship track through harvesting areas is far longer; and the location has considerably different climatic and oceanic conditions. Based on the information reviewed, and as explained above, the Senior Conformity Officer has determined that the proposed increase in shipping activity to and from Milne Inlet through Eclipse Sound, Pond Inlet with an approximated increase to 150 transits from “early June into March” does not satisfy Sections 3.2.1 or 3.3.1 of the NBRLUP. The Proponent has not adequately demonstrated that the ice-breaking associated with the Phase 2 proposal will not interfere with the Essential Area for hunting and wildlife habitat that is to be conserved under Section 3.2.1 and Appendix G, or the community travel routes and year round community harvesting activities that are to be protected under Section 3.3.1 and Appendix H. As such, the Senior Conformity Officer recommends the Commissioners make a negative conformity determination for BIMC’s project proposal for Phase 2 of the Mary River Project.
53. The BIMC has not applied for an amendment to the NBRLUP to develop a transportation corridor for ice breaking in the marine environment. The Senior Conformity Officer is of the opinion that the project proposal fails to satisfy the conformity requirements in sections 3.2.1 and 3.3.1. The Senior Conformity Officer therefore did not consider it necessary to address whether the project proposal was a proposal to develop a transportation corridor for

which the BIMC could have submitted an application to amend the NBRLUP. Had BIMC done so, the Senior Conformity Officer would still have recommended a negative conformity determination under Sections 3.2.1 and 3.3.1 of the NBRLUP.

54. There was a concern raised in the NPC's public review of the ERP that ice breaking could introduce invasive species through ballast water used to assist in ice breaking, referred to above. There are other laws that are designed to address these risks, and environmental impact analysis processes. This negative conformity determination recommendation expressly does not consider whether the possible introduction of invasive species through ballast water used for ice breaking is in conformity with the NBRLUP.

8 NBRLUP Conformity Determination: Stage 2

55. As explained above, under section 6.2 of the NBRLUP a project proposal must first conform to all conformity requirements. If the project conforms to the conformity requirements, at the second stage of the analysis if a type of land use has not previously been engaged in or contemplated, the proposal must also be consistent with the principles in section 6.3 and the goals and objectives in Chapter 3. Assuming that the project proposal had conformed to the conformity requirements, it would still have to satisfy the criteria in section 6.3 of the NBRLUP in order to receive a positive conformity determination. A brief analysis provided below suggests that the project proposal would also fail on the second stage of the conformity determination as well.
56. The NBRLUP states in Section 6.3 (p. 80):

“Principles and Factors Guiding Interpretation

The foregoing conformity criteria will be interpreted by the NPC in accordance with the principles that have guided development of this plan... These principles are described in full in Chapter 1. For convenience, they may be summarized as:

- the planning principles stated in the NLCA, including promotion of the well-being of Nunavut residents and consideration for other Canadians, as well as protection and, where necessary, restoration of environmental integrity;*
- the requirement of compliance with the NLCA;*
- special attention to protecting and promoting the well-being of Inuit and IOL;*
- compatibility of this plan with municipal land use plans;*
- the principle of sustainable development;*
- support for regional economic development;*
- encouragement of multiple land uses, subject to the principle of sustainable development; and*
- consideration for the overlapping planning interests of other regions.*

In addition to these principles, the goals and objectives specific to each topic of conformity requirements addressed in Chapter 3 will also guide the NPC’s interpretation of the criteria.”

57. There have been no known activities to date of winter shipping inside the area designated as E20 (an Essential Area). The NBRLUP specifically states under 3.5 that the NPC does not support such activity. Because the type of land use has not previously been engaged in or contemplated, the proposal must be interpreted by the NPC in accordance with the principle that guided the development of the NBRLUP that are listed under 6.3 (p. 80) of the NBRLUP and the goals and objectives in Chapter 3.
58. The Phase 2 proposal as submitted by the BIMC specific to the activities of winter shipping, between October and into March were not previously engaged in, or contemplated under the approved 2012 Mary River Project and under the approved April 2014 ERP project. Therefore the proposed expanded shipping between October and into March must be consistent with all of the guiding principles listed under 6.3 of the NBRLUP.
59. The Conformity officer believes that winter shipping activity between October

and into March are not consistent with 3 guiding principles, specifically:

- 1 “the planning principles stated in the NLCA, including promotion of the well-being of Nunavut residents and consideration for other Canadians, as well as protection and, where necessary, restoration of environmental integrity;” ,
- 2 “special attention to protecting and promoting the well-being of Inuit and IOL;”, and
- 3 the principle of sustainable development.

60. Section 1.2 of the NBRLUP (p. 4) states:

“The primary purpose of the land use plan is to ensure the well-being of the communities and permanent residents of the North Baffin Planning Region, while still taking into account the interests of all Canadians. When the plan was being prepared, the fundamental considerations were the values and priorities of the people of the Region and the importance of the resources. This plan considers that the social, economic and cultural aspects of land use are inseparable from the biophysical considerations.”

The well-being, protection and promotion of the residents in the communities of the Nunavut Settlement Area and giving special attention to the future well-being of Inuit must be put to the forefront, including giving great weight to the views of the Municipalities. The traditional travel route(s) that are needed during the winter months that allow the Inuit and residents of Pond Inlet safe access to hunting and camping location is paramount to their traditional lifestyle.

61. Balance between industrial development and the environment that guarantees long term preservation and conservation of land, wildlife and wildlife habitat is also important to the residents of North Baffin, the proposed winter shipping from October into March will greatly affect the ice conditions. The map in the NBRLUP (p. 17) shows Seal Habitat during the winter are also inside the Essential Area. Also, the private sector economy relies on some use of the land and natural resources that includes selling of seal skins and sport

hunters for polar bears. These two main activities require undisturbed access from the community of Pond Inlet to surrounding areas such as Navy Board Inlet, and to and around Bylot Island, Milne Inlet, and Pond Inlet. The NPC, when considering new or expanded activities such as ice breaking in an essential area, or other factors that can negatively impact the ecosystem or livelihoods, must keep in mind the principle of sustainable development and the planning principles under the NLCA listed in Section 1.2 of the NBRLUP. The project proposal disproportionately favours economic development over both social development and environmental protection and conservation concerns.

9 NBRLUP Conformity Determination Stage 2: Analysis

62. A proposal for a land use that has not been previously engaged or contemplated such as winter shipping as described on BIMC's Phase 2 proposal must be consistent with all of the listed principles as summarized in the NBRLUP section 6.3. The proposed winter shipping activity does not satisfy three of those principles: (1) the planning principles stated in the NLCA, including promotion of the well-being of Nunavut residents and consideration for other Canadians, as well as protection and, where necessary, restoration of environmental integrity; (2) special attention to protecting and promoting the well-being of Inuit and IOL; and (3) the principle of sustainable development. Therefore, even if the project proposal had been found to conform to the NBRLUP, it still would not have satisfied the criteria described in 6.2 (2) (b) of the NBRLUP.

10 Summary Conformity Determination Recommendation: Stage 2

63. As described above, it is recommended that the project proposal receive a negative conformity determination at the first stage of the conformity determination process. The project proposal does not conform with Sections 3.2.1 or 3.3.1 of the NBRLUP. Only if it had been found to conform with all conformity requirements would it be necessary to go to the second stage of the conformity process. Where a land use has not been previously engaged or contemplated, the second stage of the conformity determination process is to analyze if the proposal is consistent with the all of principles in section 6.3 and the goals and objectives of Chapter 3.
64. Based on the information reviewed, the Senior Conformity Officer has determined that the proposal to extend shipping of ore from June to October to June into March is a type of activity that has not been previously engaged or contemplated. Also, the proposed physical activity is not consistent all of the principles as summarized in 6.3 and the goals and objectives listed in Chapter 3 of the NBRLUP. As such, if the Commissioners find that the project proposal satisfies all conformity requirements of the NBRLUP, the Senior Conformity Officer would still have to recommend a negative conformity determination for BIMC's project proposal for Phase 2 of the Mary River project at the second stage of the conformity determination process.

11 Summary list of documents and material related to the NPC Review of BIMC's Phase 2 Project Proposal

- TAB 1 ERP BIMC submission to NPC (summary brief) June 2013
- TAB 2 Conditional determination August 2013
- TAB 3 NPC/NIRB Joint review of ERP October 2013 – March 2014/BN Feb 15
- TAB 4a Plan Amendment Recommendation April 2014 cover letter
- TAB 4b Plan Amendment Recommendation April 2014
- TAB 4c Conformity determination May 2014
- TAB 5 Preamble Appendix Q of NBRLUP
- TAB 6a BIMC cover letter submission of Phase 2 proposal October 29, 2014
- TAB 6b BIMC Phase 2 proposal Project Description October 29, 2014
- TAB 7 NIRB Notice (letter) BIMC Nov 6, 2014 NIRB will wait for NPC land use planning process
- TAB 8 NPC letter to BIMC Nov 20, 2014 (process)
- TAB 9 BIMC letter to NPC Nov 24, 2014 (process)
- TAB 10 NPC letter to DFO Dec 19, 2015 (application update)
- TAB 11 NPC letter to NWB Dec 19, 2015 (application update)
- TAB 12 NPC letter to BIMC Dec 19, 2015 (application update)
- TAB 13 DFO referral to NPC Jan 8, 2015
- TAB 14 NWB referral to NPC letter Jan 15, 2015

- TAB 15 BIMC letter to NPC Jan 26, 2015 (BIMC progress update)
- TAB 16 NPC letter to BIMC Jan 27, 2015 (NPC response to BIMC progress update)
- TAB 17 BIMC letter to NPC Feb 3, 2015 (completed NPC que. Form)
- TAB 18 NPC Email to BIMC (confirming receipt of completed que. Form)
- TAB 19 NPC letter to BIMC Feb 10, 2014 (seeking further information)
- TAB 20 BIMC response to NPC letter dated Feb 13, 2014 (Further information)
- TAB 21 NPC Email to BIMC (Confirming receipt re further information)
- TAB 22 North Baffin Regional Land Use Plan (NBRLUP), Appendix Q insert as amended
- TAB 23a Lancaster Sound Area of Importance Map (front)
- TAB 23b Lancaster Sound Area of Importance Map (back)
- TAB 23c Lancaster Sound Values of “Area of Importance”
- TAB 24 Pages from Shipping and Marine Wildlife Management Plan, Mary River Project (Updated June 2013)
- TAB 25 NPC Questions For Participants In BIMC ERP Public Review Process March 26, 2014
- TAB 26 BIMC Response RE Questions For Participants In BIMC ERP Public Review Process March 27, 2014

12 Factors Relating to the Nunavut Impact Review Board (NIRB)

65. NLCA 11.5.11

“Where the NPC has determined that a project proposal is not in conformity with the plan, the proponent may apply to the appropriate Minister for exemption. The Minister may exempt the project proposal from conformity with the plan and shall, subject to Sections 12.3.2 and 12.3.3, refer it to NIRB for screening. Non-conforming project proposals shall not be sent to NIRB until such exemption is obtained or a variance has been approved.”

NLCA 11.5.12

“Where the appropriate Minister exempts a project proposal, the Minister shall supply the NPC with written reasons and such reasons shall be made public.”

66. In the event the BIMC phase 2 proposal is determined to not be in conformity with the NBRLUP, the NPC will not forward to the NIRB its determination. It will be the responsibility of the proponent to seek exemption appropriate Ministers from the land use planning protocols as outlined in Article 11 of the NLCA.

Signed by the Senior Conformity Officer,

This 5th day of March, 2015,



Brian Aglukark, Nunavut Planning Commission

Director, Implementation



March 16, 2015

Sharon Ehloak,
Executive Director
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**Re: Baffinland Submission in Response to the Negative Conformity
Determination Recommendation from the Nunavut Planning Commission
Staff**

Dear Sharon,

Baffinland appreciates the opportunity to respond to the Nunavut Planning Commission's ("NPC") proposed Negative Conformity Determination Recommendation from NPC staff (the "**Recommendation**") in respect of Baffinland's proposed Phase 2 Development of the Mary River Project ("**Phase 2 Proposal**").

The phased approach is Baffinland's method of executing the Mary River Project in the face of challenging economic circumstances. The approval of Amendment No. 2 to the North Baffin Regional Land Use Plan ("**NBRLUP**") by the NPC and the Amendment to Project Certificate No. 005 by the NIRB in 2014 allowed the Early Revenue Phase project to proceed. The ERP has allowed training, and much needed employment opportunities to be created in the North Baffin Region, as well as business and other economic opportunities. Collaborative progress between the Qikiqtani Inuit Association and Baffinland is now beginning to take effect in the implementation of the Inuit Impact and Benefit Agreement (IIBA) between the two parties. Given the significance of NPC's proposed recommendation for the entire Mary River Project, it is important to note that as per Section 3.5 and 3.6 of the NBRLUP all of the objectives are being met and will be further enhanced by the Phase 2 proposal. Current benefits that are being realized are as follows:

- Over 200 Inuit employees are working for Baffinland
- Approximately 3000 hours of training received by Inuit employees in 2014
- Approximate dollar spend to Inuit Firms in 2014 was \$64,000,000
- Contracts awarded to Inuit Firms to date is approximately \$178,000,000

As outlined in our submission, we believe that Phase 2 is in conformity with the NBRLUP. A positive conformity determination would provide the community of Pond Inlet, North Baffin communities and all stakeholders the opportunity to participate in an environmental assessment process and consider the necessary measures that could allow Phase 2 to proceed.

We hope that the Commission will be able to make its determination at the meeting scheduled for March 25, 2015. We would be pleased to send representatives to provide clarity on Baffinland's Submission in person if that would assist the Commissioners.

It is very important to us that we be notified before you issue any final determination publicly.

I would be pleased to respond to any questions you may have concerning our Submission.

Regards,

A handwritten signature in black ink, appearing to read "Erik Madsen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Erik Madsen, Vice President
Sustainable Development, Health, Safety, and Environment

Nunavut Planning Commission

**Application to Determine Conformity of
Phase 2 of the Mary River Project
under the North Baffin Regional Land Use Plan**

**Submissions of Baffinland Iron Mines Corporation
in response to the Request for Submissions issued by
the Nunavut Planning Commission on March 5, 2015**

March 16, 2015

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I. Introduction

Baffinland requests that Nunavut Planning Commission (NPC) Staff and Commissioners reconsider the Staff Recommendation of March 5, 2015, and issue a positive conformity determination for the Phase 2 Proposal.

We submit that the Phase 2 Proposal should be given a positive conformity determination for the following reasons;

1. The Phase 2 Proposal uses the Marine Transportation Corridor in Milne Inlet and Eclipse Sound that has been established under Amendment No. 2 of the North Baffin Region Land Use Plan ("**NBRLUP**");
2. Phase 2 does not include shipping in April and May, with minimized shipping recommencing again in June (likely late June) after the ice has degraded in quality. This period is consistent with Section 3.5.6 of the Land Use Plan which specifies that "ship traffic through and around the floe edges in April, May and June shall be minimized";
3. Shipping activities will be subject to the requirements of Sections 3.5.1 to 3.5.10 of the Land Use Plan. These Sections impose requirements on the Canadian Coast Guard, the Department of Fisheries and Oceans and others to establish regional Inuit advisory committees and improved communications, including the use of Inuit monitors on board ships, to mitigate any effects of shipping on the environment, and traditional land use;
4. The Phase 2 Proposal meets all conformity requirements under the Land Use Plan including Sections 3.2.1 (Areas of Importance) and 3.3.1 (Sustainable Development).

In addition to the above considerations, Baffinland emphasises that the Phase 2 proposal could only proceed if it is approved after consideration of the proposal by the Nunavut Impact Review Board ("**NIRB**") under the provisions of Article 12 of the Nunavut Land Claims Agreement. The NIRB has a responsibility to consider all environmental, social

and economic effects of the proposal, and also to ensure that “actions” required to be carried out by government or others under the Land Use Plan (such as Sections 3.5.1 to 3.5.10) are met. In addition, NIRB must determine whether taking into account all mitigation and monitoring measures, the proposal can proceed in accordance with the concepts of sustainable development, protection of opportunities for domestic harvesting, and mitigating effects on wildlife, wildlife habitat and traditional land use activities.

Baffinland submits that it is important to balance the role of the Nunavut Planning Commission in determining whether a particular activity is in conformity with the Land Use Plan, and the role of the NIRB to review the potential *effects* of that activity, and in particular to determine whether or not the activity can be carried out in a manner which is protective of the environment, and of traditional activities – and whether or not the project should be approved.

It is respectfully submitted that the Staff Recommendation should be reconsidered on the basis that the proposal meets the conformity requirements and on the basis that the Staff Recommendation reaches conclusions on matters of potential effects which are more properly considered by the NIRB, which will have before it all of the details and information, and full submissions from all interested parties, as a foundation for making that determination under Article 12 of the Nunavut Land Claims Agreement.

II. Background to Phase 2 Proposal

Baffinland's Mary River Project as approved under amended Project Certificate No. 5 allows for the mining of 22.2 million tonnes per annum (mtpa) of iron ore and transporting up to 18 mtpa by railway and Steensby Port via the Southern all-year (including ice-breaking) Shipping Route (Foxe Basin – Hudson Strait) and, (under the ERP), transporting 4.2 mtpa of ore along the existing Tote Road and through Milne Inlet and Eclipse Sound (Northern Shipping Route) from approximately mid July until mid October.

The very high cost of developing the railway and Steensby Port (over \$5 billion) makes it difficult to finance that part of the project at this time. Baffinland has therefore taken a phased approach in order to develop the Mary River Project more gradually. The Early Revenue Phase was approved in May 2014 as an amendment to Project Certificate No. 5.

The Phase 2 Proposal is the next step in the development of the Mary River Project. The Phase 2 Proposal includes shipping of an additional 7.8 mtpa of iron ore from Milne Port via the Northern Shipping Route, and extending the shipping season from June into March. Further details are provided in the Project Description submitted on October 29, 2014.

It is important to note that the Phase 2 Proposal does not include shipping in April or May, and minimized shipping in June as advised and conformant to Section 3.5.6 of the North Baffin Regional Land Use Plan.

Attached as Schedule 1 to this submission is a chronology of previous conformity determinations in relation to the Mary River Project.

III. Phase 2 Proposal Conformity

1. Conformity with Amendment No. 2 of the NBRLUP

The NPC's Amendment No. 2 to the NBRLUP was approved in April of 2014. The amendment expressly recognizes a marine transportation corridor for shipping through Milne Inlet and Eclipse Sound. The amendment states that the corridor may be used by any person for the purpose of transportation, including for the purpose of transporting iron ore from the Mary River site.

While Baffinland recognizes that Amendment No. 2 was issued in response to the Early Revenue Phase ("**ERP**"), under which shipping only occurs during the open water season, the provisions of Amendment No. 2 do not contain any express restriction on the times of year in which shipping may occur along the Milne Inlet and Eclipse Sound Transportation Corridor.

2. Conformity with Objectives for Marine and Terrestrial Transportation (Section 3.5 of the NBRLUP) and Objectives for Mineral Exploration and Production (Section 3.6 of the NBRLUP)

Section 3.5 Objectives

Section 3.5 of the NBRLUP sets out a number of requirements with respect to marine and terrestrial transportation.

Section 3.5 notes that shipping is central to the economic well-being of the region, that shipping in the Arctic has national and international economic, defence, sovereignty and trade implications, and that the Government of Canada's policy is to encourage shipping in the waters of the Arctic Archipelago, subject to requirements ensuring Canada's sovereignty and security, the preservation of the environment, and the well-being of the residents of the region.

Section 3.5 notes that ships navigating in Canadian Arctic waters must meet or exceed operating standards designed to ensure safe, pollution-free passage. These standards are enforced by Transport Canada. Transport Canada also has noted that in relation to

consideration of the ERP, that marine shipping in Canada, and particularly in Canada's Arctic waters, is a highly regulated activity.

Section 3.5 also identifies concerns about the potential effects of shipping on wildlife. While noting that present shipping activity occurs approximately between mid-July and mid-October, Section 3.5 notes the potential for year-round shipping, and indicates that "the NPC does not support year-round Arctic shipping because of the uncertainty about its effects on regional residences and the environment and wildlife".

It is important to emphasize that the Phase 2 Proposal is not a proposal for "year-round shipping". Under Phase 2, there will be no shipping in April and May, and shipping will be minimized in June when ice quality begins to degrade. This break in the shipping season is consistent with the provisions of Section 3.5.6 of the NBRLUP which states:

3.5.6 "Ship traffic through and around the floe edges in April, May and June shall be minimized. Possible ways to protect the edges (such as having ships travel in convoys), shall be discussed by community representatives and the Canadian Marine Advisory Committee (Northern) [A]"

It is important to note that the shipping activities under Phase 2 will be subject to all of the requirements of Section 3.5 of the NBRLUP. These guidelines and requirements are applicable to agencies of the Government of Canada such as the Canadian Coast Guard and the Department of Fisheries and Oceans. These are in addition to the detailed robust regulatory regime for shipping administered by Transport Canada. The Section 3.5 requirements include:

- 3.5.1 Directions to the Nunavut Marine Counsel to address the need for regional Nunavut advisory committees. Encouragement to use Inuit monitors on board any ship travelling through the region.

(Note: Both the Project Certificate (Term and Condition 106) and the IIBA contain requirements/commitments for shipboard monitors on Baffinland vessels).

- 3.5.2 Exchange of information about ship movements and community concerns.
- 3.5.3 Meeting with community representatives at least once a year to discuss topics of mutual concern.
- 3.5.4 Ships to remain at least 10 kilometres from all coast lines where safe and practical.
- 3.5.5 Ships to remain at least 20 to 25 kilometres from the coasts of Lancaster Sound where safe and practical.
- 3.5.6 Ship traffic through and around the floe edges in April, May and June shall be minimized.
- 3.5.7 Not relevant.
- 3.5.8 Continued monitoring of the effects of ship passages.
- 3.5.9 Information to be provided to ships about current knowledge including harvesting activities, distribution of marine mammals etc.
- 3.5.10 NPC to implement the concept of a transportation “corridor” as a land use policy having general application and applying to land and water routes throughout the region.

These requirements and guidelines are categorized in the Land Use Plan, under legal status, with the reference [A] which refers to “actions”, or measures that, on approval of the plan, are *required* to be taken either by government or the NPC pursuant to Section 11.5.9 of the NLCA. These requirements set out a cooperative approach to address uncertainties about the effects of shipping on regional residents and on the environment and wildlife.

In summary, the Phase 2 shipping activities will be in conformity with the provisions of Section 3.5 of the NBRLUP – because they will be carried out on an established marine

transportation corridor (established under Amendment No. 2 to the NBRLUP), and because they will be subject to the very specific requirements and provisions relating to shipping specified by the NBRLUP in Section 3.5.1 through 3.5.10.

In recognition of requirements and issues related to shipping, and in accordance with the IIBA, Baffinland conducted a workshop in Pond Inlet in early March with representatives from the Hunters and Trappers Organization, the Hamlet Council, the Elders Committee, high school (youth representatives) and the QIA, to focus on the collection of Inuit land use information on Milne Inlet and Eclipse Sound. Further workshops are scheduled for April and May to focus on discussing community concerns and potential mitigation measures related to the Phase 2 Proposal.

In Baffinland's submission, this demonstrates that Baffinland understands the objectives in the NBRLUP in relation to shipping and is committed to achieving them through its engagement with all stakeholders, and through the NIRB process.

Baffinland also submits that it must be recognized that since the time the NBRLUP was approved in 2000, Nunavut has gained considerable experience with arctic shipping. Through extensive study prepared in connection with the regulatory process for the Mary River Project to date, Baffinland has demonstrated that the effects of shipping on regional residents and the environment and wildlife can now be better understood and predicted with more certainty and their effects mitigated.

Section 3.6 Objectives

Baffinland believes that Section 3.6 of the NBRLUP, respecting Mineral Exploration and Development, should be an important consideration in the Recommendation. Phase 2 meets all of the objectives outlined in Section 3.6 including the following:

- To encourage mineral exploration and production while protecting wildlife resources and maximizing economic benefits to the region; and
- To ensure that the communities are prepared to take advantage of the economic opportunities offered by exploration and production.

3. **Government of Canada regulations over shipping**

As noted above, it is important to consider the role of the Government of Canada, and Transport Canada in particular, in regulating shipping. Transport Canada, along with the Canadian Coast Guard, Environment Canada, and Fisheries and Oceans Canada are responsible for transportation policies and programs, and ensure that marine transportation is safe, secure, efficient and environmentally responsible. Baffinland's Arctic shipping activity is at all times of the year regulated under a number of federal statutes, including the *Canada Shipping Act, 2001*, the *Arctic Waters Pollution Prevention Act*, the *Navigation Protection Act*, the *Marine Transportation Security Act* and the *Transportation of Dangerous Goods Act, 1992*.

It is also important to consider that Transport Canada was actively involved in the review of the marine transportation components of the original Mary River Project, including year-round shipping from Steensby Port, including shipping through ice. That review included consideration of the year-round shipping route, as well as compliance requirements under the *Arctic Waters Pollution Prevention Act* and the *Canada Shipping Act, 2001* for the operation of vessels for year-round Arctic shipping. This resulted in Transport Canada making a number of recommendations in that regard. This led NIRB to approve year-round shipping through ice from Steensby Port. As noted above, Transport Canada also participated in the review of the ERP shipping in Milne Inlet and Eclipse Sound. Baffinland expects that Transport Canada will have a similar role in the review of the Phase 2 Proposal.

4. **Conformity Criteria under the NBRLUP**

As indicated in the Staff Recommendation, Section 6.2 of the NBRLUP specifies as follows:

6.2 "A project proposal conforms to this plan if:

1. It satisfies the "conformity requirements" identified in Chapter 3; and
2. It involves land use of a type

a) engaged in or previously contemplated by the communities and land use authorities in the North Baffin region, or

b) not previously engaged in or contemplated, yet the proposal is consistent with the principles identified under heading 6.3”

Section 6.2(1)

With respect to the requirements of Section 6.2(1), the Staff Recommendation identifies the following two “conformity requirements”, Section 3.2.1 (Areas of Importance) and 3.3.1 (Sustainable Development).

Baffinland submits that the Phase 2 Proposal meets each of these conformity requirements.

Section 3.2.1 (Areas of Importance)

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

In a letter dated February 10, 2015, NPC staff requested that Baffinland provide further information and details on how the Phase 2 Proposal addresses the conformity requirements of Section 3.2.1.

By letter dated February 13, 2015, Baffinland responded as follows:

“Baffinland is aware that Milne Inlet is identified as “Essential Area” in Appendix G and will take the implications of this into account during Phase 2 planning, in particular with respect to the timing of operations, selection of travel routes, and adjustment of work plans. In order to further ensure conformity with Section 3.2.1 of the NBRLUP, Baffinland will make the Nunavut Impact Review Board (NIRB), Nunavut Water Board, Fisheries and Oceans Canada, aware of the land values

and concerns (via this correspondence and also in the Environmental Impact Statement Addendum) with respect to Phase 2 activities and the Areas of Importance map in order to further ensure these essential values will be considered and conserved through the project approval process”.

Baffinland submits that it is clear that, in its development of the Phase 2 Proposal, it has met the requirements of Section 3.2.1., and that it will continue to meet those requirements in the process for consideration of the environmental and social-economic effects of the Proposal by the NIRB and by other regulators.

Baffinland has clearly met the requirement to “refer to the land values and concerns in Appendix G” and has determined important land values and concerns in the area of Milne Inlet and it Eclipse Sound. Baffinland, as part of the original Mary River Project, and as part of the consideration of the ERP proposal, has done extensive work in developing traditional knowledge (IQ), and in consulting with the community of Pond Inlet, and all other communities within the region respecting land values and concerns, and is continuing to engage on these issues. The records of those engagements, consultations and traditional knowledge studies are found in the NIRB records of both the review of the Mary River Project, and the consideration of the ERP. The NPC and its staff participated in both of those processes. As well, the NPC, together with NIRB, considered the application for the amendment of the NBRLUP to establish the Milne Inlet and Eclipse Sound Marine Transportation Corridor in 2013-2014, including the NPC public hearing in the community of Pond Inlet in January of 2014. Through these processes, Baffinland has clearly taken extensive initiatives to determine important land values and concerns in the area of Milne Inlet and Eclipse Sound. This meets the first requirement of Section 3.2.1.

As well, Baffinland has met the second requirement of Section 3.2.1, to adjust its work plans to conserve these values. The Phase 2 Proposal has been designed so that it does not include shipping in April and May, and minimized shipping in June. This schedule, as indicated above, is consistent with Section 3.5.6 of the NBRLUP which specifies that “ship traffic through and around the floe edges in April, May and June

shall be minimized”. As well, Baffinland recognizes the requirements in Section 3.5.1 through 3.5.10 (referred to above) designed to manage shipping activities “to reduce interference with people and wildlife”. These measures must be, and will be, implemented as part of the Phase 2 Proposal, and additional measures will be further considered and developed in the context of the consideration of the Phase 2 Proposal by NIRB. As indicated in the letter to NPC staff dated February 13, 2015, there are a number of examples of winter shipping in the Arctic where mitigation, monitoring, and adaptive measures have been implemented to reduce interference with wildlife and with harvesting activities. Baffinland submits that Phase 2 meets the second requirement of Section 3.2.1 of the NBRLUP.

The Staff Recommendation on conformity requirement Section 3.2.1 is contained in paragraphs 41 to 44 of the Staff Recommendation. Those paragraphs focus on the definition of “Essential Areas” rather on the terms of Section 3.2.1.

It is fundamentally important to note that the last sentence in Section 3.2.1 states:

“Those who regulate the areas shall ensure through the project approval process that these values are conserved.”

It is clear that the project approval process plays a fundamental role in the requirements of Section 3.2.1. The Staff Recommendation appears to suggest that the project approval process does not play an important role under Section 3.2.1. The Staff Recommendation appears to reach a conclusion that the land values and concerns under Appendix G could not be met in the process for environmental assessment by the NIRB. It is submitted that the NPC staff is not mandated to reach these conclusions on environmental and social-economic effects, and has not had the benefit of a review process such as that which will be conducted by NIRB as part of the project review process.

Accordingly, Baffinland requests that the NPC staff and the NPC Commission reconsider the Staff Recommendation and conclude that the Phase 2 Proposal, along

with the commitments made by Baffinland, and the pending review by the NIRB, meets the Section 3.2.1 conformity requirement.

Section 3.3.1 (Sustainable Development)

Section 3.3.1 of the NBRLUP provides as follows:

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

Again, in its letter of February 10, 2015, NPC staff requested that Baffinland provide further information and details on how the Phase 2 Proposal meets the Section 3.3.1 conformity requirement.

In its response by letter dated February 13, 2015, Baffinland stated as follows:

“As per our submissions of October 29, 2014, and February 2, 2014, Baffinland confirms it will follow the Code of Good Conduct in Appendix H of the NBRLUP. Further details as to measures Baffinland will undertake (subject to stakeholder consultation and the Phase 2 review process) during Phase 2 operations to ensure the Code of Good Conduct is followed are attached to this letter at Appendix 1. As described in Appendix 1, Baffinland will base its compliance program on existing approved measures developed in respect of the Mary River Project and Early Revenue Phase and modify and/or add to mitigation as required through stakeholder consultation and the NIRB review process.”

Appendix 1 to the February 13, 2015 letter lists each of the requirements of the Code of Good Conduct and indicates the Baffinland measures to meet those requirements. As indicated in the response given above, Baffinland will continue to modify and/or add to

the mitigation measures as required through stakeholder consultation and under the NIRB review process. Again, it is important to remember that, during the NIRB consideration of Phase 2, all communities, HTOs, the QIA, the Government of Nunavut and other interest parties may make submissions as to whether additional mitigation measures are required as terms and conditions of approval for the Project.

Consistent with Section 3.3.1 and more specifically, Section 3.5.6, Baffinland has addressed the “timing” of the operations so that they do not include shipping in April and May, and minimized shipping in June. The review of the Phase 2 Project will give further consideration to these issues, and to the issue of wildlife and of community travel routes and additional mitigation resources will be considered. Baffinland has agreed to follow the Code of Good Conduct contained in Appendix H and has indicated the measures it will take to follow the Code, while at the same time confirming that it will comply with any additional measures identified as terms and conditions under the NIRB review process.

It is submitted that Baffinland has demonstrated full compliance with the provisions of Section 3.3.1, the policy of sustainable development, and the Code of Good Conduct.

Again, it is important to note that issues of sustainable development, and protection of wildlife and domestic harvesting will be subject to further and detailed review as part of the environmental assessment process to be conducted by NIRB. NIRB has the responsibility to address these issues – and it is the institution mandated under the NLCA to fulfil these requirements, after a detailed process of review providing all interested parties with opportunities to raise concerns and issues, and to propose any additional mitigation, monitoring or adaptive management measures in the project certificate terms and conditions.

The Staff Recommendation on conformity requirement is contained in paragraphs 46 to 51 of the Staff Recommendation. Similar to our submissions on Section 3.2.1, Baffinland submits that the Staff Recommendation should be reconsidered.

Section 3.3.1 refers to the policy of sustainable development and the objective of avoiding harm to wildlife and 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”. Section 3.3.1 goes on to say importantly:

“In order to achieve those ends, all land users shall follow the Code of Good Conduct contained Appendix H.”

It is clear that Baffinland has committed to achieve these ends through adherence to the Code of Good Conduct in Appendix H.

Baffinland, in fact, has committed to go beyond the Code of Good Conduct contained in Appendix H. Baffinland has timed its shipping operations so that there is no shipping during April and May and limited shipping in June. As indicated above, this minimizes ship traffic through and around the floe edges in April, May and June. Baffinland has also identified a further list of mitigation and monitoring measures which have been used in other Arctic shipping operations (see the Baffinland letter of February 13, 2015). Finally, Baffinland has confirmed that these issues will be addressed in further detail, with input from all stakeholders including the community of Pond Inlet, the QIA as the regional Inuit association, the HTOs, the Government of Nunavut, and any other interested party. This project approval process is a full and comprehensive forum in accordance with the provisions of Article 12 of the NLCA, for determining the potential effects of a project, protection of environmental and socio-economic interests, and terms and conditions which the proposal must adhere to under any project certificate.

It is submitted that the Staff Recommendation goes beyond the conformity requirements of Section 3.3.1 – which have been clearly satisfied by the Phase 2 Proposal. It is submitted that the Staff Recommendation should be reconsidered because it engages in speculative consideration of potential effects, and mitigation measures, all of which will be addressed in a full and comprehensive consideration by NIRB. The Phase 2 Proposal clearly meets the requirement of Section 3.3.1, and will likely be subject to additional terms and conditions for addressing wildlife and community travel routes after

consideration of the positions of all interested parties through the consideration of the Phase 2 Proposal by NIRB.

Section 6.2(2)

It is further submitted that the Phase 2 shipping activities meet the conformity criteria of Section 6.2(2) of the NBRLUP. These requirements are only addressed summarily in paragraph 62 of the Staff Recommendation. For the reasons set out previously and below, Baffinland submits that the Staff Recommendation does not fully address these requirements and should be reconsidered.

Shipping activities have been engaged in and previously contemplated in the North Baffin Region. In particular, shipping activities into Milne Inlet and Eclipse Sound have been undertaken since the 1960s, and are expressly authorized under Amendment No. 2 to the NBRLUP.

To the extent that the proposed shipping activities during the winter season are new, it is submitted they are consistent with the principles identified under heading 6.3. Many aspects of these principles and factors have previously been addressed in the review and approval of the Mary River Project, in the review and approval of the ERP, and in the review and approval of Amendment No. 2 to the NBRLUP.

Development of the Mary River Project (including the ERP) to date, and consideration of Phase 2 as a new phase in this existing project, is consistent with the following principles under Section 6.3:

- the planning principles stated in the NLCA;
- the requirement of compliance with the NLCA (this includes a requirement that the potential effects of the Phase 2 Proposal be reviewed to determine whether it can receive approval subject to terms and conditions, under Article 12 of the NLCA);
- special attention to protecting and promoting the well-being of Inuit and IOL;

- the principle of sustainable development;
- support for regional economic development; and
- encouragement of multiple land uses, subject to the principle of sustainable development.

Accordingly, Baffinland submits that the Phase 2 Project meets the conformity criteria of Section 6.2 of the NBRLUP. As noted above, the Phase 2 Proposal is respectful of both the objectives and the requirements in relation to marine transportation under Section 3.5 of the Land Use Plan, is consistent with the objectives for encouraging mineral exploration and production under Section 3.6 of the Land Use Plan, and must undergo further detailed consideration by the Nunavut Impact Review Board under the provisions of Article 12 of the NLCA. Through that process, under which all interested parties will have opportunities to participate, NIRB will determine whether or not the Phase 2 Proposal should be approved to proceed, and if so, under what additional terms and conditions for protection of both the environment and socio-economic well-being.

IV. Conclusion and Request for Conformity Determination

The Staff Recommendation poses a fundamental limitation to the land use process of the NPC and the impact assessment process of the NIRB. The predicament caused by the Recommendation is that Baffinland and all stakeholders are not permitted to refine plans for mitigating potential impacts through the NIRB process, despite the Phase 2 Proposal being conformant to the planning objectives and terms of the NBRLUP. A negative conformity determination effectively closes the door on the consultation and assessment process outlined under Article 12 of the NLCA. Baffinland believes that the people of North Baffin need an opportunity to be heard.

In summary, Baffinland submits that the Staff Recommendation overlooks critical aspects of the Phase 2 Proposal and holds Baffinland to a standard that can only be met in the NIRB process. Baffinland has demonstrated that the Phase 2 Proposal meets both the conformity requirements (Stage 1) test of Section 6.2(1) and the Stage 2 test of Section 6.2(2). Baffinland respectfully asks that the NPC staff and the Commissioners reconsider the Staff Recommendation and grant a positive conformity determination that will allow ongoing engagement and consultations to continue, and the environmental impact assessment to proceed, based on input from all stakeholders.

Schedule 1

Mary River Project Chronology:

Project Phase	Event	Date
Mary River Project	NPC issues positive conformity determination	April 30, 2008
	NIRB issues Project Certificate No. 5	December 28, 2012
	NPC recommends NBRLUP Amendment 1 - transportation corridor for railroad	December 9, 2013
Early Revenue Phase	NPC issues conditional positive conformity determination	August 13, 2013
	NPC recommends NBRLUP Amendment 2 - transportation corridor for Milne Inlet Tote Road and marine transportation corridor for Northern Shipping Route from Milne Port	April 14, 2014
	NBRLUP Amendment 2 issued - transportation corridor, including Northern Shipping Route	April 28, 2014
	NPC issues final conformity determination for the ERP	May 16, 2014
	NIRB issues amended Project Certificate No. 5	May 28, 2014
Phase 2 Proposal	Baffinland submits Project Description to NPC and NIRB	October 29, 2014
	DFO Referral and NWB Referral to NPC	January 2015

	Baffinland submits additional conformity requirements form in response to request from NPC	February 3, 2015
	Baffinland submits information in response to NPC February 10 th information request about NBRLUP s. 3.2.1 and s. 3.3.1	February 13, 2015
	Staff Recommendation	March 5, 2015



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Nunavut Planning Commission
Commission d'Aménagement du Nunavut

April 8, 2015

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The Commission's conformity determination process for the above-noted project proposal is now complete.

Signed,



Hunter Tootoo, Chairperson
On behalf of the Nunavut Planning Commission

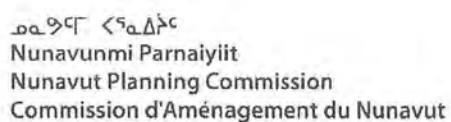
Enclosure

CC. Erik Madsen, Baffinland Iron Mines Corporation
Oliver Curran, Baffianland Iron Mines Corpration
Navarana Beveridge, Qikiktani Inuit Association
Stephen W. Bathory, Qikiktani Inuit Association
Stephen Traynor, Aboriginal Affairs & Northern Development Canada
Tracey Mc Caie, Aboriginal Affairs & Northern Development Canada
Tara Arko, Nunavut Impact Review Board
Phyllis Beaulieu, Nunavut Water Board
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CONFORMITY DETERMINATION BY THE COMMISSIONERS

1

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 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.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



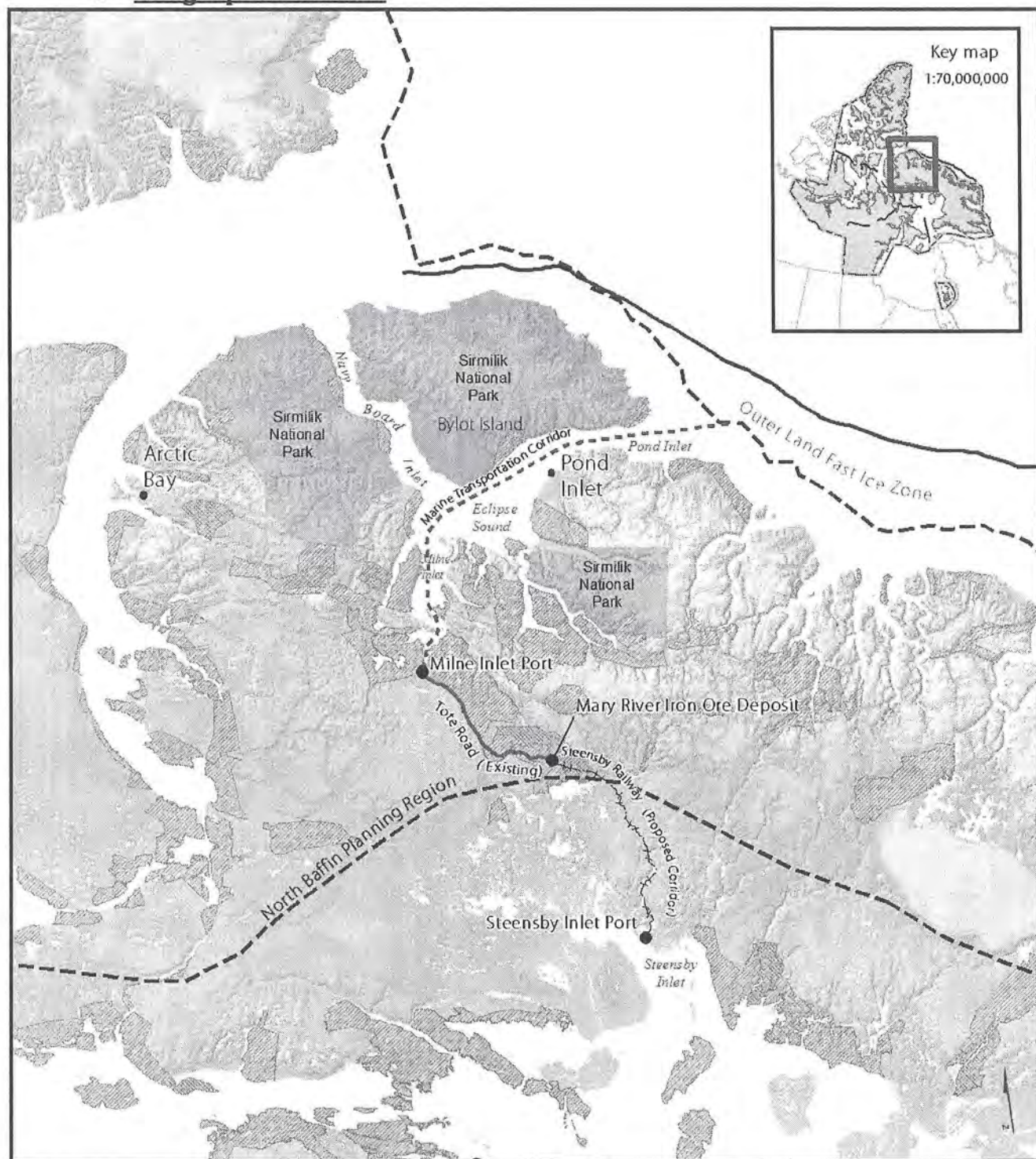
Hunter Tootoo, Chairperson
On behalf of the Nunavut Planning Commission

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



- North Baffin Planning Region Boundary
- Nunavut Settlement Area Boundary
- Inuit Owned Lands (Surface excluding minerals)
- Inuit Owned Lands (Surface and Subsurface including minerals)
- Sirmilik National Park

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1:3,000,000

 Kilometres
 Projection: Lambert Conformal Conic

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