



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

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

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

#### SUMMARY OF COMMENT SUBMISSIONS BY THE PARTIES

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

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

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

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

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

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

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

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

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

The NIRB observes that, as noted in the submissions of the parties, the information requirements associated with Baffinland's Amendment #3 Application must be viewed in the full context of the existing and approved scope of the original Mary River Project Proposal, the subsequent Early Revenue Phase Project Proposal and the Commission's previous conformity determinations and NBRLUP plan amendments. In addition, the NIRB recognizes that the level and extent of impact assessment information required by the Commission to make its determination as to whether or not the proposed amendment to the NBRLUP should be granted may differ markedly from the level and extent of the information that will subsequently be required by the NIRB to complete the assessment of all components of the proposed Phase 2 Development Project Proposal. The NIRB notes that given this complex context, it is perhaps not surprising that the parties are not in agreement regarding the extent to which the information supplied by Baffinland to date in support of the Amendment #3 Application is sufficient to meet the requirements of Appendix J and K.

At the outset, the NIRB emphasizes that it is entirely within the Commission's jurisdiction to decide whether, on the basis of all submissions received and on the basis of submissions received at the upcoming Public Hearing, the information requirements of the NBRLUP have been met such that the Commission can proceed to decision-making in respect of Baffinland's Amendment #3 Application. From the NIRB's perspective, with the important recognition that the existing transportation corridor has been previously fully assessed by the NIRB, and that this information can and should properly inform the consideration of the current Amendment #3 Application, the NIRB has concluded that the majority of the specific information required by Appendices J and K of the NBRLUP that could reasonably be expected to be provided at this stage in the process has been provided.

With regards to the requirements of NBRLUP Appendix K that transportation corridors shall "be designed in accordance with existing and prospective land use capability including topography, soil, permafrost and wildlife; and be designed in accordance with the availability of granular supplies", the NIRB notes that Baffinland's amendment application appears to include only minimal information that addresses these points. More specifically, the current application does not discuss the availability/source of granular supplies expected to meet the construction needs of the proposed railway and does not specify whether new or existing borrow pits would be created/used along the Tote road alignment to support site preparation/construction of the proposed railway system. Previous geotechnical inspections have identified areas along the Tote Road alignment with significant terrain stability issues (due to extensive permafrost degradation) and geotechnical reports provided by Baffinland through the NIRB's monitoring program demonstrate that some of the borrow pits used for the Tote Road upgrades in 2009 continue to

affect the stability of the road area. QIA inspections and NIRB site visits have also observed extensive thaw of ice-rich materials immediately at the edge of the road or toe of the road embankment. To ensure that the proposed railway routing is appropriate from a land use planning perspective, the NIRB suggests that additional evidence could be filed by Baffinland with the Commission to demonstrate that sufficient consideration has been provided to meet the spirit and intent of these specific guidelines.

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

#### COMMISSION GUIDANCE TO THE NIRB

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

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

- Recognizing the Commission's central role under Appendix Q of the NBRLUP in terms of defining the nature and extent of permitted uses within existing transportation corridors, the NIRB, the Proponent, and all parties to any subsequent NIRB assessment would benefit from guidance regarding the definition and limits on permitted uses in this context; and
- Recognizing the likely relevance of Caribou Protection Measures (CPMs) as developed by the parties as referenced in Appendix I of the NBRLUP and developed during the NIRB's assessment of the Early Revenue Phase Project Proposal, the NIRB would benefit from the Commission's advice and direction regarding the implementation of the current CPMs and the extent to which these CPMs should be implemented and applicable to the proposed activities, works and undertakings in the Phase 2 Development Project Proposal.

#### CONCLUSION

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

Sincerely,

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

Ryan Barry  
Executive Director  
Nunavut Impact Review Board

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

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