



PROPOSED PLAN AMENDMENT NO. 1 BY BAFFINLAND IRON MINES CORPORATION
Public Review Template for comments and submissions

Please return completed templates by **12 NOON EASTERN TIME MAY 10, 2019** to:

- Brian Aglukark, Aglukark@nunavut.ca, Nunavut Planning Commission, P.O. Box 419, Arviat, NU X0C 0E0 | Fax: (867) 857-2243;

1.	Date of Submission:	May 10, 2019
2.	Name:	David Rochette, Regional Director General
3.	Organization (if applicable):	Crown-Indigenous Relations and Northern Affairs Canada, representing participating federal departments of the Government of Canada
4.	Your contact information or representative contact (mail, email or fax):	David.Rochette@canada.ca
5.a	Are you one of the following "parties"? (Check all that apply)	<input type="checkbox"/> Inuit of Nunavut;
		<input type="checkbox"/> Other Aboriginal Peoples listed in Article 40 of the Nunavut Agreement;
		<input type="checkbox"/> Resident of Nunavut;
		<input type="checkbox"/> Nunavut Tunngavik Inc. and Designated Inuit Organizations;
		<input type="checkbox"/> Regional Inuit Organizations;
		<input type="checkbox"/> Municipalities;
		<input type="checkbox"/> Community Land and Resource Committees;
		<input type="checkbox"/> Hunters and Trappers Organizations;
		<input checked="" type="checkbox"/> Departments and agencies of the federal and territorial government;
		<input type="checkbox"/> Nunavut Institution of Public Government or
	<input type="checkbox"/> Designated Inuit Organization	

<p>5.b</p>	<p>If you are not a “party” listed above, please describe how the proposed amendment will affect you.(Explain how your interest is substantial and direct, your participation will further the public review, and your participation will contribute to the openness and fairness of the public review.)</p>	
<p>6.</p>	<p>Your concerns, comments and/or support of the proposed amendment</p>	<p>The Government of Canada supports making an amendment to the North Baffin Regional Land Use Plan (NBRLUP), to create a multi-use transportation corridor south from the Mary River mine site. Recognizing the work completed by the Commission in its original review of Amendment No. 1, its reviews of Amendments No. 2 and 3, and the work of the Nunavut Impact Review Board in its assessment of the original Mary River Mine project and the Early Revenue Phase, the Government of Canada considers the current application has met the requirements of Appendices J and K of the NBRLUP.</p> <p>In April 2014, the Government of Canada sent Amendment No.1 back to the Commission for revision because the wording of Amendment No.1 recommended by the Commission on December 9, 2013 did not provide for a general multi-use transportation corridor.</p> <p>The Government of Canada notes that the latest proposed wording of the Amendment No.1 has addressed many of the comments that it provided in April and June 2014 on the original recommended amendment.</p> <p>However, we recommend that the Commission address an inconsistency in wording. Section 2.2.1 states that the corridor is “more specifically described on Schedule A of the Amendment” while section 2.3 states that “The location of the transportation corridor as shown in the appended map is approximate”. We consider that the map in Schedule A provides a general geographic and visual description of the corridor, rather than displaying its precise location. Therefore it is recommended that the text in section 2.2.1 state “as <u>generally</u> illustrated in Schedule A”. This recommendation should carry through other references to Schedule A in the Amendment including those in the Background section.</p>

7.	Do you want an in-person public hearing? If so, why?	<p>The Government of Canada is of the opinion that a further public hearing is not necessary, given the small scope of the proposed revision to the originally proposed plan amendment, and the detailed review that the original amendment received. The original amendment was subject to a public review and hearings as part of the original Mary River Project review, jointly conducted by the Commission and the Nunavut Impact Review Board which led to the Commission's recommendation to approve Amendment No. 1 on December 9, 2013.</p> <p>However, if the Commission decides to hold a public hearing the Government of Canada recommends that the scope of the hearing be limited to the revisions proposed to the amendment distributed by the Commission on March 22, 2019, so as not to duplicate the review of the amendment that took place through the joint review of the Mary River Project by the Commission and the Nunavut Impact Review Board.</p>
8.	Your preferred language	English
9.	List of attachments and references	<ul style="list-style-type: none"> • Government of Canada letter, dated September 14, 2018, to the Nunavut Planning Commission regarding the Amendment# 1 to the North Baffin Regional Land Use Plan. • Aboriginal Affairs and Northern Development Canada Minister Response to NBRLUP Amendment No.1 Recommendation, dated April 28, 2014 • Government of Canada Recommended Changes to Amendment No 1 to NBRLUP, dated June 5, 2014



Ms. Sharon Ehaloak
Executive Director
Nunavut Planning Commission
P.O. Box
IQALUIT NU X0E 0C0

September 14, 2018

Dear Ms. Ehaloak:

Thank you for your letter of August 23, 2018, regarding the next steps to revise the proposed Amendment No. 1 to the North Baffin Regional Land Use Plan. This amendment concerns the portion of the transportation corridor from the Mary River mine site south to Steensby Inlet located within the North Baffin planning region. You have asked for our advice on potential options for the Nunavut Planning Commission to complete this work. I appreciate the opportunity to offer our views.

Both of the options presented in your letter would begin by revising the wording of the proposed Amendment No. 1 modeled on the approved Amendment No. 3, the latter of which includes the transportation corridor from the Mary River mine site north to Milne Inlet. We agree this would be an appropriate model to use in considering revisions to Amendment No. 1 (with necessary changes, such as the removal of references to the marine component) and anticipate that revising the amendment in this manner could address many of the detailed comments the Government of Canada provided to the Commission in June 2014, following the rejection of proposed Amendment No. 1.

The main difference in the two options you propose appears to be whether or not the Commission should undertake a public review of revisions proposed to Amendment No. 1 prior to submission to the federal and territorial ministers and Nunavut Tunngavik Incorporated for approval. I understand this is based on subsection 62(2) of the *Nunavut Planning and Project Assessment Act (NuPPAA)*, which requires the Commission to consider whether any further public review is necessary when it revises a proposed amendment.

The Act stipulates that the requirement and form of, any public review is the Commission's decision to make. In making its decision it is important for the Commission to consider relevant factors to determine whether the Commission has obtained enough public feedback to make an informed decision on the revisions to the wording.

In view of the scope of the revisions the Commission is considering to the proposed Amendment No. 1, in addition to the scope of the original public review of the Mary River project jointly conducted by the Commission and the Nunavut Impact Review Board in 2012, which included the railway to Steensby Inlet, the Government of Canada's preference is that further public review is likely not necessary.

However, we also recognize that a number of potentially significant changes, as noted in your letter, have occurred in the intervening years, including legislative changes and decisions on other projects, and other parties may have other views and concerns. Thus, the Government of Canada would support proceeding with further public review if there is a request with strong rationale for it from planning partners.

Thank you again for providing the opportunity to share our views on the proposed path forward for this revised amendment.

Yours sincerely,



David Rochette
Regional Director General, Nunavut

c.c.: Hannah Uniuqsaraq, Acting Executive Director, Nunavut Tunngavik Inc
Pauloosie Suvega, Deputy Minister of Environment, Government of Nunavut

Ministre des Affaires autochtones
et du développement du Nord



Minister of Aboriginal Affairs and
Northern Development

Ottawa, Canada K1A 0H4

APR 28 2014

Mr. Percy Kabloona
Acting Chairperson
Nunavut Planning Commission
PO Box 2101
CAMBRIDGE BAY NU X0B 0C0

Dear Mr. Kabloona:

Thank you for your letters of December 9, 2013 and April 14, 2014, recommending Amendments No. 1 and No. 2 respectively, to the North Baffin Regional Land Use Plan.

Under Article 11 of the Nunavut Land Claim Agreement, the Minister of Aboriginal Affairs and Northern Development and the territorial government Minister responsible for renewable resources may reject or accept a recommendation for a plan amendment.

In response to the Commission's proposed Amendment No. 1 Mary River Mine Site Transportation Corridor to the North Baffin Regional Land Use Plan, I am unable to accept the amendment as it is currently drafted. As per the Nunavut Land Claim Agreement, section 11.5.6 (b), should the Ministers choose to reject a recommended plan amendment they shall:

refer it back to the Nunavut Planning Commission for reconsideration accompanied by written reasons; the Nunavut Planning Commission may make the reasons of the Ministers public.

The primary concern with the recommended Amendment No. 1 is that it does not provide for a general multiple-use transportation corridor, but rather restricts the corridor to a single user and a single use. This approach is at odds with key principles found in the North Baffin Regional Land Use Plan and general land use planning approaches. To the extent that opening a corridor to multiple uses and users has the potential for environmental impacts, the comprehensive co-management regimes in Nunavut, and the various regulatory schemes applicable to the different modes of transportation, are capable of assessing and regulating the infrastructure and activities of users and potential users of any given transportation corridor or infrastructure.

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While this is the substantive reason for rejection, there were other issues in the text, leading to challenges in the interpretation. More detailed comments on Amendment No. 1 will be forthcoming from departmental officials for the Commission's consideration and preparation of a new recommendation for the Ministers. It is my expectation that the Commission will publicly solicit feedback on potential recommendations from appropriate parties, including government officials, prior to issuing its revised recommendation to Ministers.

In response to the Nunavut Planning Commission's proposed Amendment No. 2 Milne Inlet Tote Road and Marine Transportation Corridor to the North Baffin Regional Land Use Plan, and pursuant to the Nunavut Land Claim Agreement, Article 11, I am pleased to inform you that I have approved the Commission's recommendation and signed the attached approval page. Under Article 11 of the Nunavut Land Claim Agreement, this amendment would be effective only after both I and my territorial colleague, the Government of Nunavut's Minister of Environment, have approved it.

I would like to thank the Commission for its continued work and dedication and look forward to receiving a revised Amendment No. 1 to the North Baffin Regional Land Use Plan when it is ready.

Sincerely,



Bernard Valcourt, PC, QC, MP

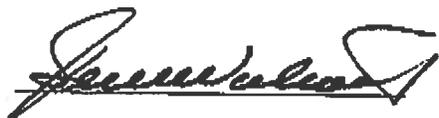
Encl.

c.c.: The Honourable Leona Aqlukkaq, PC, MP
The Honourable Gail Shea, PC, MP
The Honourable Lisa Raitt, PC, MP
The Honourable Shelly Glover, PC, MP
The Honourable Greg Rickford, PC, MP
The Honourable Johnny Mike, MLA
Ms. Elizabeth Copland
Ms. Cathy Towtongie
Ms. Okalik Eegeesiak
Mr. Tom Paddon

Amendment Number 2 to the North Baffin Regional Land Use Plan

Ministerial Approval

The Undersigned, are pleased to approve, on behalf of the Government of Canada and the Government of Nunavut, Amendment Number 2 to the North Baffin Regional Land Use Plan which is effective as of _____



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

The Honourable Johnny Mike
Minister of Environment
Government of Nunavut
Box 2410,
Iqaluit, Nunavut X0A 0H0

Ministre des Affaires autochtones
et du développement du Nord



Minister of Aboriginal Affairs and
Northern Development

AVR 28 2014
APR 28 2014

Ottawa, Canada K1A 0H4

VIA FACSIMILE: 867-983-2594

Ms. Elizabeth Copland
Chairperson
Nunavut Impact Review Board
PO Box 1360
CAMBRIDGE BAY NU X0B 0C0

Dear Ms. Copland:

Thank you for your letter of March 17, 2014, in which you conveyed your assessment and recommendations as contained in the Public Hearing Report for Baffinland Iron Mine Corporation's Mary River Early Revenue Phase Proposal. The ministers of Environment Canada, Fisheries and Oceans Canada, Natural Resources Canada, Transport Canada and I, as the Ministers with regulatory jurisdiction for the Mary River Project, have authority to accept, reject or vary the recommendations in this report pursuant to sections 12.8.3 and 12.6.13 of the Nunavut Land Claim Agreement.

As described in the report, the Nunavut Impact Review Board has conducted a reconsideration of Project Certificate No. 005 pursuant to section 12.8.2 of the Nunavut Land Claim Agreement and has recommended the acceptance of the Project with modification to 44 of the previously approved 182 Terms and Conditions and the addition of 8 new Terms and Conditions.

The other Ministers and I are pleased with the work undertaken by the Review Board for this reconsideration process as well as with your collaborative work with the Nunavut Planning Commission as they considered possible amendments to the North Baffin Regional Land Use Plan.

With respect to the latter point, I want to inform the Review Board that I have responded separately today to the Nunavut Planning Commission indicating my acceptance of their recommended North Baffin Regional Land Use Plan - Milne Inlet Tote Road and Marine Transportation Corridor amendment. Assuming the Government of Nunavut also accepts this amendment, these decisions should allow the Planning Commission to confirm its positive conformity determination for the Mary River Early Revenue Phase.

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Having carefully considered the Review Board's Public Hearing Report and the Mary River Project's previously approved decision (as reflected in the Nunavut Impact Review Board Project Certificate No. 005), and the other Ministers with regulatory jurisdiction for this Project, I accept the Review Board's recommendation that the Mary River Early Revenue Phase Proposal may proceed subject to terms and conditions. Integral to this decision, my colleague Ministers and I have varied some of the Review Board's recommended terms and conditions and rejected one on the grounds that these were more onerous than necessary or not onerous enough to mitigate potential impacts to an acceptable level. The enclosed document details these variances and their associated rationale. We trust that you will proceed as quickly as possible to complete these revisions to the Project Certificate for this important project.

On behalf of my colleagues, I thank you for effectively and efficiently discharging your duties under the Nunavut Land Claim Agreement.

Sincerely,



Bernard Valcourt, PC, QC, MP

Encl.

c.c.: The Honourable Leona Aqlukkaq, PC, MP
The Honourable Gail Shea, PC, MP
The Honourable Lisa Raitt, PC, MP
The Honourable Shelly Glover, PC, MP
The Honourable Greg Rickford, PC, MP
The Honourable Johnny Mike, MLA
Mr. Percy Kabloona
Ms. Cathy Towtongie
Ms. Okalik Eegeesiak
Mr. Tom Paddon

**APPROVED MODIFICATIONS TO THE TERMS AND CONDITIONS
OF THE MARY RIVER PROJECT (TO INCLUDE EARLY REVENUE PHASE ACTIVITIES)**

In accordance with sections 12.8.3 and 12.6.13 of the *Nunavut Land Claim Agreement* and with the rationales presented herein, the Ministers with regulatory jurisdiction for the Mary River project have agreed to the following modifications to the Nunavut Impact Review Board's (the Review Board) recommendations for the Mary River Project Certificate (NIRB Certificate No. 005) reconsideration which assessed impacts resulting from the Early Revenue Phase Proposal. All other Review Board recommendations regarding the terms and conditions for the Mary River Project Certificate (i.e. those not referenced below, but detailed in the Public Hearing Report of the Mary River Early Revenue Phase) are accepted as proposed.

Term and Condition #103: Marine Environment – Traffic Log and Shipping Information

Although Ministers generally agree with the Review Board's recommendation that this Term and Condition should apply to the Early Revenue Phase activities, there are ice-related reporting activities associated with this Term and Condition that would not be applicable to the northern shipping route, where ice-breaking is not part of the approved project. Applying ice-related terms to the northern route would therefore be more onerous than necessary, for the Early Revenue Phase. Shipping by the Proponent utilizing the northern shipping route through Milne Inlet is to occur during open-water season only and, as such, ice-breaking related reporting would not be required in the Early Revenue Phase of the Mary River project.

For added clarity, the Ministers have therefore modified the Term and Condition to reflect the conditional application of some reporting requirements only to places and times where ice-breaking activities are or may be undertaken. This Term and Condition will continue to require an annual report based on shipping during the ice-free season to monitor the effectiveness of mitigation of shipping impacts to marine wildlife.



Original Term and Condition #103 (Project Certificate)	Board Proposed Term and Condition #103 Revisions	Ministers' Final Approved Term and Condition #103
<p>The Proponent shall report annually to the NIRB regarding project-related ship track and sea-ice information, including:</p> <ul style="list-style-type: none"> a. A record of all ship tracks taken along both shipping routes covering the entire shipping season; b. An overlay of ship tracks onto ice imagery to determine whether ships are effectively avoiding shore leads and polynyas; c. A comparison of recorded ship tracks to the expected nominal shipping route, and probable extent of year-round shipping during periods of ice cover and open-water; d. An assessment of the level of adherence to the nominal shipping route and the spatial extent of the shipping zone of influence; and e. Marine bird and mammal species and number of individuals attracted to ship tracks in ice. 	<p>No changes proposed by the Review Board through confirmation that this Term and Condition should apply to the Early Revenue Phase is noted on page 124.</p>	<p>The Proponent shall report annually to the NIRB regarding project-related ship track and sea-ice information, including:</p> <ul style="list-style-type: none"> a. A record of all ship tracks taken along both shipping routes covering the entire shipping season; b. When employing ice-breaking, an overlay of ship tracks onto ice imagery to determine whether ships are effectively avoiding shore leads and polynyas; c. A comparison of recorded ship tracks to the expected nominal shipping route, and probable (if any) extent of year-round shipping during periods of ice cover and open-water; d. An assessment of the level of adherence to the nominal shipping route and the spatial extent of the shipping zone of influence; and e. When employing ice-breaking, marine bird and mammal species and number of individuals attracted to ship tracks in ice.

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Term and Condition #106: Marine Environment – Shipboard Observers

As recommended by the Nunavut Impact Review Board, it is agreed that Term and Condition #106 must be amended. However, the recommended wording of this Term and Condition is varied by the Ministers for greater clarity, as per below, to make reference to the applicable regulations that would ensure required lighting for safe navigation of a vessel while still meeting the requirement for shipboard observation.

<p>Original Term and Condition #106 (Project Certificate)</p> <p>The Proponent shall ensure that shipboard observers are employed through all seasons and provided with the means to effectively carry out assigned duties. The role of shipboard observers in shipping operations should be taken into consideration during the design of ore carriers, with climate controlled stations and shipboard lighting incorporated to permit visual sightings by shipboard observers during all seasons and conditions.</p>	<p>Board Proposed Term and Condition #106 Revisions</p> <p>The Proponent shall ensure that shipboard observers are employed during seasons where shipping occurs and provided with the means to effectively carry out assigned duties. The role of shipboard observers in shipping operations should be taken into consideration during the design of any ore carriers purpose-built for the Project, with climate controlled stations and shipboard lighting incorporated to permit visual sightings by shipboard observers during all seasons and conditions.</p>	<p>Ministers' Final Approved Term and Condition #106</p> <p>The Proponent shall ensure that shipboard observers are employed during seasons where shipping occurs and provided with the means to effectively carry out assigned duties. The role of shipboard observers in shipping operations should be taken into consideration during the design of any ore carriers purpose-built for the Project, with climate controlled stations and shipboard lighting incorporated to permit visual sightings by shipboard observers during all seasons and conditions. Any shipboard lighting incorporated should be in accordance with the Canada Shipping Act, 2001's Collision Regulations, and should not interfere with safe navigation of the vessel.</p>
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Term and Condition #107: Marine Environment – Shipboard Observers

As recommended by the Nunavut Impact Review Board, it is agreed that Term and Condition #107 must be amended. However, the recommended wording of this Term and Condition is varied by the Ministers for greater clarity, as per below, to make reference to the requirement for a Special Flight Operations Certificate, in order to ensure the safety of the public and protection of other users of the airspace during the operation of the unmanned air vehicle.

<p>Original Term and Condition #107 (Project Certificate)</p>	<p>Board Proposed Term and Condition #107 Revisions</p>	<p>Ministers' Final Approved Term and Condition #107</p>
<p>The Proponent shall revise the proposed "surveillance monitoring" to improve the likelihood of detecting strong marine mammal responses occurring too far ahead of the ship to be detectable by observers aboard the ore carriers. A baseline study early in the shipping operations could employ additional surveillance to detect potential changes in distribution patterns and behavior. At an ambitious scope, this might be achieved using unmanned aircraft flown well ahead of ships, or over haul-out sites in the case of walruses.</p>	<p>The Proponent shall revise the proposed "surveillance monitoring" to improve the likelihood of detecting strong marine mammal, seabird or seaduck responses occurring too far ahead of the ship to be detectable by observers aboard the ore carriers. A baseline study early in the shipping operations could employ additional surveillance to detect potential changes in distribution patterns and behavior. At an ambitious scope, this might be achieved using unmanned aircraft flown well ahead of ships, or over known areas of importance for seabirds or haul-out sites in the case of walruses.</p>	<p>The Proponent shall revise the proposed "surveillance monitoring" to improve the likelihood of detecting strong marine mammal, seabird or seaduck responses occurring too far ahead of the ship to be detectable by observers aboard the ore carriers. A baseline study early in the shipping operations could employ additional surveillance to detect potential changes in distribution patterns and behavior. At an ambitious scope, this might be achieved using unmanned aircraft flown well ahead of ships, or over known areas of importance for seabirds or haul-out sites in the case of walruses, in accordance with the requirements of their Special Flight Operations Certificate.</p>

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Terms and Conditions #118, #139 and #177 (Various subjects)

The Review Board's Mary River Early Revenue Phase Public Hearing Report contains three inconsistencies in the text related to Terms and Conditions #118, 139 and 177; however, the Ministers believe we have correctly understood the Review Board's intended meaning, and accept that meaning in respect of #118, 139 and 177. In each case, the Review Board has stated in different pages of the Report that each of these Terms and Conditions required minor revision and then stated in another section that it did not require modification. The Report's summary of proposed wording changes to existing measures does not include any reference to Terms and Conditions #118 and #177. This summary does however recommend a change for Term and Condition #139.

Upon review and for decision clarity, the Ministers with jurisdiction for these Terms and Conditions have affirmed Terms and Conditions #118 and #177 as originally worded, i.e. no change due to the Early Revenue Phase. Term and Condition #139 is also accepted with revisions as proposed in the summary section of the Review Board Report, as per below.

<p>Original Term and Condition #118 (Project Certificate)</p> <p>The Proponent shall incorporate into the appropriate mitigation plan prior to construction, thresholds for the use of specific mitigation measures meant to prevent or limit marine wildlife disturbance, such as bubble curtains for blasting, and nitrate removal.</p>	<p>Board Proposed Term and Condition #118 Revisions</p> <p>On page 124 of the Public Hearing Report, the Review Board stated this Term and Condition required minor revision for application to the Early Revenue Phase; however, the summary section of the proposed Term and Condition modifications that starts on page 168 contains no proposed revision for this Term and Condition.</p>	<p>Ministers' Final Approved Term and Condition #118</p> <p>Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.</p>
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<p>Original Term and Condition #177 (Project Certificate)</p> <p>The Proponent shall enroll any foreign flagged vessels commissioned for Project-related shipping within Canadian waters into the relevant foreign program equivalent to Transport Canada's Marine Safety Delegated Statutory Inspection Program.</p>	<p>Board Proposed Term and Condition #177 Revisions</p> <p>On page 148 of the Public Hearing Report, the Review Board stated this Term and Condition required minor revision for application to the Early Revenue Phase; however, the summary section of the proposed Term and Condition modifications that starts on page 168 contains no proposed revision for this Term and Condition.</p>	<p>Ministers' Final Approved Term and Condition #177</p> <p>Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.</p>
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<p>Original Term and Condition #139 (Project Certificate)</p> <p>Prior to commencing construction, the Proponent is requested to undertake and provide the results of a detailed labour market analysis which provides quantitative predictions of the number of employees that may reasonably need to be sourced from southern Canada and from foreign markets, identifying where applicable, the country of origin for the foreign labour.</p>	<p>Board Proposed Term and Condition #139 Revisions</p> <p>Prior to commencing construction, the Proponent is requested to undertake and provide the results of a detailed labour market analysis which provides quantitative predictions of the number of employees that may reasonably need to be sourced from southern Canada and from foreign markets, identifying where applicable, the country of origin for the foreign labour. Within 90 days of the issuance of the Project Certificate, the Proponent is required to submit an updated labour Market Analysis which considers requirements of the Early Revenue Phase as well as hiring points within Nunavut and outside of the North Baffin region and Regional Study Area.</p> <p>(Although page 129 of the Public Hearing Report stated this measure was not proposed to be modified, page 132 proposed that it should be and the summary section of the proposed Term and Condition Modifications that starts on page 168 contains the above revised wording for this Term and Condition.)</p>	<p>Ministers' Final Approved Term and Condition #139</p> <p>Ministers confirm the Review Board's proposed wording change for this term and condition as referenced on page 207 of the Report. This Term and Condition will apply equally as modified to all aspects of the Mary River Project, including the Early Revenue Phase.</p>
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Term and Condition #171: Accidents and Malfunctions – Terrestrial Wildlife Management and Monitoring Plan

Term and Condition #171 has been recommended for revision by the Nunavut Impact Review Board to address the increased potential for incidences, during Early Revenue Phase activities, between truck traffic on the Milne Inlet Tote Road and caribou that may use the roadway as a corridor for moving between locations. As recommended by the Nunavut Impact Review Board, it is agreed that Term and Condition #171 must be amended; however, the recommended wording of this Term and Condition is varied by the Ministers for application clarity to ensure that the Term and Condition will sufficiently mitigate any potential harm to caribou from rail or vehicular traffic.

<p>Original Term and Condition #171 (Project Certificate)</p>	<p>Board Proposed Term and Condition #171 Revisions</p>	<p>Ministers' Final Approved Term and Condition #171</p>
<p>The Proponent shall include within its updated Terrestrial Wildlife Management and Monitoring Plan, a commitment to establish deterrents along the railway embankment at any areas where it is determined that caribou are utilizing the embankment to facilitate movement and where such movement presents a likelihood of caribou mortality to occur.</p>	<p>The Proponent shall include within its updated Terrestrial Wildlife Management and Monitoring Plan, a commitment to establish deterrents along the railway embankment at any areas where it is determined that caribou are utilizing the embankment and Tote Road to facilitate movement and where such movement presents a likelihood of caribou mortality to occur.</p>	<p>The Proponent shall include within its updated Terrestrial Wildlife Management and Monitoring Plan, a commitment to establish deterrents along the railway and Tote Road embankments at any areas where it is determined that caribou are utilizing the embankments or transportation corridors to facilitate movement and where such movement presents a likelihood of caribou mortality to occur.</p>

Term and Condition #179 (c): Cumulative Effects – Capacity Reserve

As recommended, this term and condition would prohibit the total volume of ore mined from Deposit #1 from exceeding 18 million tonnes per annum for both the earlier Approved Mary River Project and the Early Revenue Phase Proposal, despite the stated intention of the Proponent to make the ore shipping volume processed through Milne Inlet (4.2 million tonnes maximum) additive to the ore to be transported out by railway and Steensby Inlet (18 million tonnes maximum).

It is the view of the Ministers with regulatory jurisdiction for the Mary River project that this term and condition, which places a limit on the mine ore production rate at 18 million tonnes per annum, is more onerous than necessary to mitigate potential impacts. The Review Board, in its Public Hearing Report, has not adequately substantiated potential adverse ecosystemic and/or socio-economic impacts, including cumulative impacts, to any of the valued components (e.g. marine mammals, air quality, jobs, financial viability of project and resulting community benefits, etc.) that might result from and therefore require mitigation of the concurrent implementation of the northern and southern transportation and shipping activities. Term and Condition #179(c) is therefore rejected.

Original Term and Condition (Project Certificate)	Board Proposed New Term and Condition #179 (c)	Ministers' Final Approved Status - Rejection of Term and Condition #179(c)
None – This is a new term and condition.	When mining commences under both the Approved Project and the Early Revenue Phase Proposal, the total volume of ore mined from Deposit #1 in any given calendar year shall not exceed 18 million tonnes.	The responsible Ministers have rejected this proposed new term and condition on the basis that it is more onerous than necessary. The Review Board has not presented adequate evidence to support the assertion that this term and condition would mitigate adverse socio-economic and ecosystemic impacts, including cumulative impacts.

Terms and Conditions #180-182: Transboundary Effects

Terms and Conditions #180-182 of the Project Certificate address potential transboundary impacts of the Project and require that the Makivik Corporation be invited to participate in the Marine Environment Working Group, be provided with regular updates on activities of the Marine Environment Working Group, and be provided with ship route deviation reports from the Proponent. The Review Board indicated in the Public Hearing Report that these terms would not apply to the Early Revenue Phase activities. This appears inconsistent with Terms and Conditions #77 and #127 that are proposed to apply to the Early Revenue Phase and respectively allow Makivik to participate as members of the Marine Environment Working Group (without limitation) and ensure Nunavik communities are kept informed of shipping activities.

It is the view of the Ministers that there should be consistency among the Terms and Conditions regarding transboundary interests associated with the Project and that Makivik may have interest in and can provide valuable insight into mitigating transboundary impacts whether the Mary River Project employs the northern or the southern shipping routes. Therefore, the Ministers have decided that Terms and Conditions #180-182 will apply to all aspects of the Mary River Project, including the Early Revenue Phase.

<p>Original Term and Condition #180 (Project Certificate)</p> <p>The Marine Environment Working Group established for this Project shall invite a representative from Makivik Corporation to be a member of the Group</p>	<p>Board Proposed Term and Condition #180 Revisions</p> <p>No changes proposed by the Review Board though confirmation that this Term and Condition should NOT apply to the Early Revenue Phase is noted on page 166 of the Report.</p>	<p>Ministers' Final Approved Term and Condition #180</p> <p>Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.</p>
<p>Original Term and Condition #181 (Project Certificate)</p> <p>To enable Makivik Corporation and Nunavik communities near shipping lanes to remain informed and involved in those shipping activities which could affect the marine environment and marine mammals.</p>	<p>Board Proposed Term and Condition #181 Revisions</p> <p>No changes proposed by the Review Board though confirmation that this Term and Condition should NOT apply to the Early Revenue Phase is noted on page 166 of the Report.</p>	<p>Ministers' Final Approved Term and Condition #181</p> <p>Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.</p>
<p>Original Term and Condition #182 (Project Certificate)</p> <p>Baffinland shall make available to Makivik Corporation any ship route deviation reports provided to the NIRB in accordance with the terms and conditions set out in Section 4.12.4 of the Final Hearing Report.</p>	<p>Board Proposed Term and Condition #182 Revisions</p> <p>No changes proposed by the Review Board though confirmation that this Term and Condition should NOT apply to the Early Revenue Phase is noted on page 166 of the Report.</p>	<p>Ministers' Final Approved Term and Condition #182</p> <p>Ministers confirm the original wording for this term and condition as written which will apply equally to all aspects of the Mary River Project, including the Early Revenue Phase.</p>

June 5, 2014

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

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

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

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

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

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

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

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

¹ The ambiguity is found in the following paragraph:

Nothing in this Amendment will prevent or prohibit the use of the lands as described in this Amendment and as shown on Schedule "A" for the purpose of wildlife harvesting and/or traditional activities carried out by residents of the Region, provided such use does not create or contribute to a safety hazard or otherwise disrupt the operation of the railway and associated facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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