

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 policies 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...