



January 26, 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 – DFO File NU-07-HCAA-CA7-0050, NWB File , NIRB File # 08MN053

Further to our previous correspondence to Nunavut Planning Commission (NPC) in respect of the above noted application for conformity, Baffinland is writing to express our concerns regarding the speed and transparency of the Phase 2 NPC processes to date, and to reiterate our previous requests to NPC to make an expeditious conformity determination.

While we appreciate NPC's resourcing challenges, NPC has a duty under the *Nunavut Land Claim Agreement* to issue conformity determinations when provided with a project proposal. In its Phase 2 project planning, Baffinland has relied on statements regarding timelines which appear on NPC's website: *"Although there are no time limits on how long the NPC may take to review a project proposal, the NPC aims to complete a review as quickly as possible, usually within 10 days of receipt of the proposal, and issue a conformity determination shortly thereafter."* As of today's date, it has been 89 days since Baffinland provided its Phase 2 Project Description to NPC with little progress on the file.

Since commencement of Early Revenue Phase mining operations in September 2014, the Mary River Mine has provided considerable benefits to Inuit, the Qikiqtani Region, Nunavut and to Canada overall. Phase 2 is an important part of the Mary River Project and the current regulatory delays are jeopardizing the development of this project.

Baffinland has been responsive to NPC's information requests (see correspondence summary at Appendix A). In our view, the materials that have been provided to NPC provide the necessary information for NPC to issue a determination that the works and activities proposed under Phase 2 are in conformity with the NBRLUP, as amended by Amendment No. 2. Baffinland reconfirms that it will comply with all requirements of the NBRLUP applicable to Phase 2. We have enclosed with this letter additional support for our view that Phase 2 conforms with the NBRLUP (see Appendix B) as well as a copy

of the Mary River Caribou Protection Measures (see Appendix C), which were developed in collaboration between QIA and Baffinland and will be followed during Phase 2.

Baffinland is aware that NPC has not yet issued the revised Amendment No. 1 to the NBRLUP relating to the Mary River Project transportation corridors, which NPC agreed on May 30, 2012 met the guidelines for plan amendment. While Amendment No. 1 is necessary in relation to the Mary River Project, Baffinland confirms that Phase 2 does not utilize the transportation corridor that will be included in Amendment No. 1. As such, Baffinland requests that NPC prioritize the Phase 2 conformity determination above processing of Amendment No. 1 to the NBRLUP. That said, following issuance of the Phase 2 conformity determination Baffinland requests that the NPC resume processing of Amendment No. 1 and issue the necessary amendments.

For all of these reasons, Baffinland requests that the NPC complete its Phase 2 conformity determination as soon as possible and in any event on or before January 30, 2015 in order to prevent any further regulatory and project delays.

Should you have any questions about this letter or its attachments, please do not hesitate to contact me or Oliver Curran directly.

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:

The Honourable Peter Taptuna, Government of Nunavut
The Honourable Johnny Mike, Government of Nunavut
The Honourable Bernard Valcourt, Government of Canada
Ms. Cathy Towntongie, NTI
Mr. Pauloosie Akeeagok, QIA
Mr. Stephen Williamson-Bathory, QIA
Mr. Ryan Barry, NIRB
Ms. Georgina Williston, DFO
Ms. Phyllis Beaulieu, NWB
Mr. Stephen Traynor, AANDC
Ms. Tracey McCaie, AANDC
Ms. Sharon Ehloak, NPC

**Appendix A – Summary of Phase 2 Correspondence
between Nunavut Planning Commission and Baffinland**

October 29, 2014	Baffinland provides Mary River Project Phase 2 Project Description to NPC as well as a completed <i>"Nunavut Planning Commission Application to Determine Conformity with the North Baffin Regional Land Use Plan."</i>
November 20, 2014	NPC writes to Baffinland that, <i>"to allow the NPC to determine whether a conformity determination is required to the above noted amendment request, and to ensure previous relevant plan requirements are implemented, or to determine if the proposed amendments are in conformity to the approved plan in question, the NPC will need to have in its records all the relevant amendment applications and the associated project descriptions before making a decision."</i>
November 24, 2014	Baffinland writes to NPC providing detailed rationale for its view that NPC is imposing procedural requirements that are not necessary or proper. Both the NLCA in Section 11.5.10 and Chapter 6 of the NBRUP specify that, "upon receipt and review of a project proposal", the NPC will determine whether the project proposal is in conformity with the Land Use Plan. There is no indication in either the NLCA or the Land Use Plan that applications are required.
December 19, 2014	NPC writes to Baffinland reiterating its requirement for applications and provides no further information on NPC conformity timelines and process.
December 22, 2014	Baffinland submits Phase 2 application to Fisheries and Oceans Canada.
January 8, 2015	As requested by NPC in correspondence to DFO of December 19, 2014, Fisheries and Oceans Canada forwards request for review for consideration in NPC Phase 2 conformity process.
January 13, 2015	Baffinland submits amendment application for Phase 2 to Nunavut Water Board.
January 15, 2015	NWB issues correspondence to Mary River distribution list indicating that application will be forwarded to NPC.
January 20, 2014	Phone call from Baffinland to NPC confirms that Baffinland applications to DFO and NWB have been received by NPC.

Appendix B – Phase 2 Conformity with NBRLUP

Baffinland's planned Phase 2 Development (Phase 2) of the Mary River Project (the Project) was described in Baffinland's Phase 2 Project Description provided to Nunavut Planning Commission (NPC) on October 29, 2014. It is the general submission of Baffinland that Phase 2 is in conformity with the North Baffin Regional Land Use Plan (NBRLUP). A positive determination of conformity for Phase 2 would be consistent with the NBRLUP, as amended, which includes a transportation corridor with a terrestrial component and a marine component, as follows:

"The lands ... described as the line commencing at the Mary River Mine Site, approximately 71.3N-79.33W, and running generally North for approximately 100 km to the Milne Port at approximately 71.53N-83.54W and then running generally North through Milne Inlet and then East through Eclipse Sound to Baffin Bay for approximately 270 km and as generally illustrated in Schedule "A" of the Amendment may be developed for the purpose of a transportation corridor..."¹

The following submissions provide further information.

I. Brief Overview of Phase 2

As explained in Baffinland's Phase 2 Project Description, Baffinland intends to proceed with the Mary River Project in a phased approach. The Company has already obtained an amendment to Project Certificate No. 005 for the Early Revenue Phase (ERP) and has commenced the ERP. Moving from the ERP capacity of 4.2 Mtpa to Phase 2 capacity of 12 Mtpa requires the following actions, the details of which are set out in the Phase 2 Project Description:

- Milne Inlet Tote Road upgrades within the recognized transportation corridor, to accommodate increased use;
- Milne Port Infrastructure enhancements, including terrestrial development within the Potential Development Area (PDA) of the ERP;
- Construction of a second ore dock;
- Increased utilization of Milne Port for marine shipping;
- Utilization of the Northern Shipping Route as per Amendment #2 of the NBRLUP;
- Extension of the shipping season from June into March; and
- Trans-shipping from purpose built ice class self-discharging ore carriers to Cape vessels in Eclipse Sound during the open water season (late July to mid-October).

¹ NBRLUP Appendix Q Amendment No. 2, s. 2.2.1.

II. No New Phase 2 Transportation Corridors Required

Phase 2 does not propose the development of any new transportation corridors within the North Baffin Island region and relies on existing and established transportation corridors. As set out in s. 2.2.1 of NBRLUP Amendment No. 2, a transportation corridor may be used by any person for the purpose of transportation:

A transportation corridor, for the purposes of the NBRLUP, may be used by any person for the purpose of transportation, including for the purpose of servicing the operation of the Mary River Mine Site and transporting iron ore from the Mary River Mine Site. Any industrial activity within the corridor shall be in accordance with the terms and conditions of any project certificates, permits, licences or other authorizations. Any incidental activities or regular maintenance associated with the upkeep or continued operation of the transportation corridor to ensure the safe operation of transportation related infrastructure and activities will not require further review or amendment.

As a result, the transportation corridors already included in the NBRLUP as amended is clearly not limited to use for a specific phase of the Mary River Project. This aligns with the following statement from section 3.5.10 of the NBRLUP:

3.5.10. While ensuring the respect of applicable Canadian international obligations in the region, the NPC shall implement the concept of a transportation and/or communications “corridor” as a land use policy having general application, and applying to land and water routes throughout the region, based on the processes outlined in Appendices J and K.

Once a transportation corridor has been added to the NBRLUP, there is no requirement to amend the NBRLUP when a party proposes to increase its existing use of the corridor. As Amendment No. 2 of the NBRLUP notes, any industrial activity within the transportation corridor in question must be in accordance with the terms and conditions of any project certificates, permits, licences or authorizations. Any effects from the proposed increased use of the transportation corridor by Baffinland for Phase 2 will be considered by NIRB in the course of its consideration of Phase 2 amendment to the Project Certificate for the Project. If NIRB does determine that Phase 2 should proceed, it is expected that NIRB will include appropriate terms and conditions for the mitigation of environmental and socio-economic impacts, before submitting a report to the Minister respecting any amendment to the Project Certificate.

III. Phase 2 Terrestrial Transportation

Phase 2 terrestrial transportation will take place along the Tote Road between the Mary River Mine Site and Mine Port. Amendment No. 2 describes the Milne Inlet Tote Road as follows:

“The terrestrial component, encompassing the Milne Inlet Tote Road, includes a fixed smooth or paved surface, made for travelling by motor vehicle or carriage throughout the year and may include bridges, culverts, tunnels, crossings, signals, telecommunication facilities, yards, terminals and service and storage facilities associated with a road as well as any other infrastructure required to ensure the safe operation and movement of motor vehicles or carriages”.

Section 2.3 of NBRLUP Amendment No. 2 indicates that,

“The location of the transportation corridor as shown in the appended map is approximate. Minor adjustments shall not require a further amendment to the NBRLUP.”

Phase 2 will result in increases in the volume of traffic along the Tote Road and will require some road upgrades. NIRB will be undertaking an assessment of the potential effects of the increase in traffic along the existing Tote Road transportation corridor.

IV. Phase 2 Marine Transportation

The NBRLUP, as amended by Amendment No. 2, includes a transportation corridor with a marine shipping route from the Milne Port, then running generally North through Milne Inlet and then East through Eclipse Sound to Baffin Bay to the eastern extent of the land-fast ice zone (the Northern Shipping Route). The Northern Shipping Route includes the transportation corridor further described as follows:

“The marine component, encompassing the shipping corridor, includes a marine travel route used by ship traffic to navigate and may also include marine infrastructure, including aids to navigation, fixed docks, floating docks, piers, ports, loading and unloading facilities, storage facilities, refueling facilities and any other facilities or infrastructure which is required for operating the port or for ensuring the safe passage of vessels.”²

As indicated in the Amendment, “*The location of the transportation corridor as shown in the appended map is approximate. Minor adjustments shall not require a further amendment to the NBRLUP*”.

The NBRLUP as amended provides that incidental activities for the continued operation of the transportation corridor and to ensure safe operation of transportation activities will not require further review or amendment of the NBRLUP:

“...Any incidental activities or regular maintenance associated with the upkeep or continued operation of the transportation corridor to ensure the safe operation of

² *Ibid.*

transportation-related infrastructure and activities will not require further review or amendment.”³

Similarly, the NBRLUP expressly does not prohibit marine navigation in accordance with applicable laws and regulations:

“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.”⁴

Phase 2 will utilize the Northern Shipping Route. The Northern Shipping Route has been used since the establishment of the port at Milne Inlet and the Tote Road. Phase 2 will continue to include transits to and from Milne Port for ships bringing supplies and equipment, as well as ore carriers. Phase 2 will include Milne Port infrastructure enhancements, including terrestrial development within the Potential Development Area (PDA) of the ERP, and minor adjustments to the existing ore dock. All revisions to Milne Port infrastructure are located within areas designated in the existing transportation corridor.

Phase 2 includes a proposed extension of the shipping season to June into March utilizing two purpose built ice class post-Panamax sized self-discharging ore carriers for ship-to-ship transfer of ore. Phase 2 will include trans-shipping from the purpose built ice class self-discharging ore carriers to Cape vessels in Eclipse Sound during the open water season (late July to mid-October).

The NBRLUP does not include any restrictions on all weather shipping within the North Baffin Region. Trans-shipping is an established shipping activity, regulated in accordance with existing international law and conventions, federal law and regulations applicable to shipping and navigation, and the NLCA. Phase 2 activities will proceed in accordance with any terms and conditions set by NIRB and other authorities with regulatory jurisdiction over these activities. It is noted that Phase 2 shipping would not commence until after the NIRB confirms the activity may proceed.

³ *Ibid.*

⁴ *Ibid.*

Appendix C – Caribou Protection Measures

Joint Statement of QIA and Baffinland
to the Nunavut Planning Commission and the Nunavut Impact Review Board
regarding Appendix I of the North Baffin Regional Land Use Plan

Further to the correspondence of the Qikiqtani Inuit Association to the Nunavut Planning Commission dated January 10, 2014, “*Re NPC Public Hearing, North Baffin Regional Land Use Plan, Baffinland Iron Mines Corporation’s Proposed Early Revenue Phase Project*”, as well as the related submissions referenced in that letter addressing requirements of the North Baffin Regional Land Use Plan QIA and Baffinland wish to provide the Nunavut Planning Commission (“NPC”) and the Nunavut Impact Review Board (“NIRB”) with the following update regarding caribou protection measures applicable to the project.

As the NIRB and NPC will recall, in that correspondence the QIA indicated that QIA and Baffinland have been engaged in a process to develop project-specific Caribou Protection Measures. These measures were also developed in the context of the Commercial Production Lease of Inuit Owned Lands (#Q13C301) in the project area. Pursuant to #Q13C301, QIA and Baffinland are required to enter into an agreement on caribou protection measures within six months of the Commercial Lease date (Sept. 6, 2013).

QIA is pleased to report that project-specific Caribou Protection Measures have now been developed in collaboration with Baffinland. The Mary River Caribou Protection Measures (the “Mary River CPM”) draw from the North Baffin Regional Land Use Plan (NBRLUP) (and in particular, Appendix I) and incorporate refinements to address project specific application. The Mary River CPM will generally apply to the Mary River Project Area (as that term is defined at section 3.6 of the IIBA).

Both QIA and Baffinland agree that the Mary River CPM, integrated into the Terrestrial Environment Management and Monitoring Plan (TEMMP), are appropriate measures to take in respect of the protection of caribou.

Further to its January 10th correspondence, QIA wishes to now confirm to the NPC that the ERP fully complies with the requirements of Appendix I of the North Baffin Regional Land Use Plan.

Commercial Production Lease of Inuit Owned Lands

#Q13C301

Mary River Caribou Protection Measures

January 29, 2014

What follows provides an overview of supplemental caribou protection measures (“Mary River CPM”) developed by QIA for application to the Mary River Project Area (as defined at section 3.6 of the IIBA). These measures have been developed and agreed upon through collaboration between QIA and Baffinland. These Mary River CPM incorporate significant roles for the Terrestrial Environment Working Group (“TEWG”), which currently includes representatives from QIA, Baffinland, Environment Canada, and the Government of Nunavut, and may subsequently add more representatives in the future.

In developing these Mary River CPM, QIA and Baffinland have fully considered all provisions of the NBRLUP and in particular those set out in Appendix I, entitled “*DIAND Caribou Protection Measures*”. They were further informed by Baffinland’s Final Environmental Impact Statement for the Mary River Project, as well as the Final Environmental Impact Statement ERP Addendum and participation in NPC and NIRB processes related to the ERP proposal.

The Mary River CPM will be included as part of the Terrestrial Environment Management and Monitoring Plan (“TEMMP”) and further managed by the TEWG.

Mary River CPM Working Principles

The Mary River CPM are based on the same principles as the current TEMMP. Further details will continue to be developed in discussion with the QIA, Baffinland and the community hunter and trapper organizations, other management agencies, the Terrestrial Environment Working Group and other interested parties.

The Mary River CPM working principles also include a recognized need to implement based on caribou presence as well as a recognized need to adapt based upon herd size.

These project-specific caribou protection measures may be updated from time to time to take into account any relevant amendments to the North Baffin Regional Land Use Plan.

Item	Mary River CPMs
1	It is noted that the “Caribou Protection Map” (as referred to in the North Baffin Land Use Plan (NBRLUP)) has not to date been incorporated in the NBRLUP. As a result, there is no defined North Baffin region “Caribou Protection Area” (as that term is described in the NBRLUP).

	<p>Consistent with the provisions of the NBRLUP the development of a Caribou Protection Map, including monitoring of its effectiveness of caribou protection measures (“CPMs”) is the responsibility of the Nunavut Planning Commission, Nunavut Wildlife Management Board, the Nunavut Impact Review Board, Aboriginal and Northern Affairs Canada, Government of Nunavut and Qikiqtani Inuit Association, land users that may be impacted by the Caribou Protection Map (including Baffinland), and other relevant stakeholders.</p> <p>Any Caribou Protection Map developed to guide the application of CPMs within the NBRLUP should be informed by the following pieces of information:</p> <ul style="list-style-type: none"> i. Relevant Inuit Qaujimatuaqangit related to North Baffin Caribou ii. Relevant scientific research and literature related to North Baffin Caribou iii. Other relevant up-to-date sources related to defining caribou habitat within the North Baffin <p>It is noted these CPM generally apply to the Mary River Project Area (as that term is defined at section 3.6 of the IIBA).</p> <p>The Caribou Protection Map, once developed, may identify areas where mitigation measures shall apply consistent with these Mary River CPMs. If in the future, a “Caribou Protection Map” or a specific “Caribou Protection Area” is included in the NBRLUP, and if either of those areas include parts of the Mary River Project Area, Baffinland and QIA will revisit these Mary River CPM and incorporate any relevant measures.</p>
2	<p>If required based on monitoring results, the Permittee shall work with TEWG to identify Project Protection Zones within the Mary River Project Area. Project Protection Zones shall be based upon the predictability of project encounters with caribou through identification of low, moderate or high probability areas for caribou encounters based on available information. Thresholds for each category shall be developed, taking herd size into consideration.</p> <p>If established, the Project Protection Zones shall be reviewed in consultation with the TEWG from time-to-time based upon results of project monitoring.</p>
3	<p>The Permittee shall work with the TEWG to identify any “Designated Crossings” (which are understood to be equivalent to “water crossings” as described under the NBRLUP). Designation of these areas should take seasonality into consideration, i.e. periods of frozen conditions.</p> <p>Based upon the presence of caribou, intensifying CPMs may be considered reasonable for areas identified as “Designated Crossings”. Monitoring thresholds shall be developed in consultation with the TEWG, taking herd size into consideration.</p> <p>The Permittee and QIA in consultation with the TEWG will develop objective criteria to be applied by the QIA Land Use Inspector and/or QIA On-Site Environmental Monitor in order to release the Permittee from any additional CPMs applicable to the Designated Crossings (e.g. for the reason that caribou are not expected to use those areas identified as “Designated Crossings”).</p>
4	<p>Measures to reduce dust fall onto surrounding vegetation (including caribou forage, especially lichens and mosses) which affects caribou habitat shall be linked to management and operational plans based upon monitoring results and application of thresholds. Thresholds should be subject to modification based upon herd size.</p> <p>Options to be considered for mitigation measures shall include:</p> <ul style="list-style-type: none"> i. Capping ore trucks using a roll on tarp ii. Avoidance of blasting during high winds iii. Speed restrictions to minimize road dust; and iv. Dust suppression, through watering or other methods. <p>The development of thresholds and, modification of applicable mitigation measures should be identified in consultation with the</p>

	TEWG, taking relevant legislation into consideration.
5	<p>Based upon monitoring results, including the application of thresholds, the Permittee may intensify mitigation within the Mary River Project Area during pre-calving, calving and post-calving seasons (15 May – 15 July). Application of mitigation measures shall take the presence of caribou and herd size into consideration. Mitigation measures shall include the possibility of temporary suspension.</p> <p>Baffinland and QIA will in consultation with the TEWG develop objective criteria to be applied by the QIA Land Use Inspector and/or QIA On-Site Environmental Monitor in order to allow the Permittee to commence or resume activities prior to July 15 in the event that caribou cows are not expected to use those parts for calving or post-calving.</p>
6	<p>Based upon monitoring results, including the application of thresholds, the Permittee may intensify mitigation within the Mary River Project Area during pre-calving, calving and post-calving seasons (15 May – 15 July), including consideration of measures such as modifying or restricting traffic on roads and railway if cow-calf pairs or groups with calves are observed within proximity of the road or railway. A distance of 100m from roads and railway is selected as the initial basis from which modifications or restrictions shall apply. Thresholds should be subject to modification based upon herd size.</p> <p>Mitigation measures specific to traffic modifications shall consider inclusion of the following options:</p> <ul style="list-style-type: none"> i. reducing vehicle speed; ii. convoying trucks; iii. using pilot vehicles; <p>Consideration of these and additional measures shall be discussed and identified in consultation with the TEWG from time-to-time, including assessment and potential modification of distance thresholds.</p> <p>Baffinland and QIA will in consultation with the TEWG develop objective criteria to be applied by the QIA Land Use Inspector and/or QIA On-Site Environmental Monitor in order to permit the Permittee to commence or resume activities in the Mary River Project Area prior to July 15 (e.g. for the reason that caribou cows are not expected to use those parts for calving or post-calving.)</p>
7	<p>In the event that any Project Protection Zones are established in accordance with the principles set out at Section 2 above, the following mitigation measures could be considered for application in “high probability” areas:</p> <ul style="list-style-type: none"> i. Applying lower slope road and rail bed berms, and lower embankment heights where possible. ii. Design and modify the road and rail bed configuration to maximize sightlines for drivers and avoid blind spots (corners and angle of approach up the berm onto the road/rail surface); iii. Managing snow clearing and height of snow berms so that they do not restrict vision for drivers and caribou to see each other. iv. Design and modify the road (and rail bed) configuration to maximize sightlines for caribou approaching the road and rail bed and avoid blind spots; v. Ensure that escape routes are conspicuous off the road surface, especially in zones rated as high probability encounter areas; vi. During snow-clearing ensure that snow banks are maintained at less than 1 m (and preferably at less than 0.5 m based on research at the Ekati diamond mine (Rescan 2011) and are broken into sections with gaps so caribou are not ‘trapped’ on the road or railway; vii. Signage for known caribou crossings throughout Project infrastructure. <p>Application of mitigation measures, including consideration for additional measures shall be identified in consultation with the TEWG.</p>

	Additional mitigation measures may include those measures specifically described in Appendix I of the North Baffin Regional Land Use Plan.
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