



NIRB File No.: 08MN053
NWB File No.: 2AM-MRY1325
QIA File No.: LUA-2008-008
DFO File No.: 2008 MR

July 14, 2023

David Qajaaq Qamaniq
Chairperson
Mittimatalik Hunters and Trappers Organization
P.O. Box 189
Pond Inlet, NU, X0A 0S0

Sent via email: pond@baffinhto.ca

Re: NIRB File No. 08MN053 – Disposition of the Mittimatalik Hunters and Trappers Organization Notice of Motion Dated June 19, 2023, Baffinland Iron Mines Corporation’s “Sustaining Operations Proposal” (SOP) and Updated Procedural Guidance for Parties

Dear David Qajaaq Qamaniq,

On June 19, 2023 the NIRB received a Notice of Motion from the Mittimatalik Hunters and Trappers Organization (MHTO) (NIRB Document ID: 345707) in relation to the Nunavut Impact Review Board’s (NIRB or Board) on-going assessment of Baffinland Iron Mines Corporation’s “Sustaining Operations Proposal” (SOP or Proposal). The MHTO’s Motion, which was circulated by the Board on June 20, 2023 requested that the Board issue an order to:

Prepare video recordings of Intervenor summary presentations delivered at the Iqaluit Community Roundtable sessions occurring July 27-29, 2023, and

To replay video recordings of Intervenor presentations from the July 27- 29 Community Roundtable sessions for attendees at the Pond Inlet Community Roundtable session August 1-2, 2023.

Following review and consideration of the MHTO’s Motion and comments filed by interested parties by July 5, 2023, the Board met to consider the Motion. For the reasons outlined in the text that follows, the Board has decided the following:

- Due to practical and logistical limits, the Board has **not granted** the MHTO's Motion to record and replay the 10-minute summary presentations provided by commenting parties during the in-person Community Roundtable session held in Iqaluit.
- However, as the Board recognizes that parties who are unable to attend the Community Roundtable session may be interested in hearing the proceedings, the Board has added capacity to host two teleconference "listen lines" (one line will carry the Inuktitut live feed and one line will carry the English live feed of the Community Roundtable sessions). The Board notes that interested parties calling in will only be able to listen to the proceedings and will not be able to speak or be heard by the Board or other callers. In addition, parties are advised that if the audio feeds are interrupted or fail, the Board will not interrupt the in-person Community Roundtable proceedings and will proceed with the in-person proceedings as planned without the audio lines.

MHTO's MOTION

For the convenience of the parties and in the interests of brevity, the grounds for the MHTO's Motion and argument in support of the Motion are very briefly summarized below, but all parties are advised to review the Motion in its entirety¹ as the full submission was considered by the Board during its consideration of the Motion.

The grounds for the Motion are briefly summarized as follows:

The Proponent is provided time at the beginning of the Pond Inlet Community Roundtable sessions to present the proposal and conclusions from the Final Environmental Impact Statement Addendum, however parties are only provided time at the Iqaluit session to present.

The MHTO submits that this is procedurally unfair, and that participants at the Pond Inlet Community Roundtable must be provided with the same opportunity to hearing information from the Intervenors as is being proposed for Iqaluit. Providing summaries in written format for Pond Inlet participants to review is not an adequate alternative.

Providing only attendees of the sessions in Iqaluit an opportunity to hear from Intervenors systematically limits the Pond Inlet participants' understanding of the assessment and positions of intervening parties in the context of this application. Pond Inlet is the community most impacted by the proposal, and in the interest of protecting Inuit harvesting rights, the highest standards for information exchange and presentation requirements must be met for participants from Pond Inlet, therefore Mittimatalik should receive the same level of information than that of the participants attending the Iqaluit sessions.

¹ Mittimatalik Hunters and Trappers Organization (MHTO), Notice of Motion, June 19, 2023 available from the following link to the NIRB's online public registry for this assessment <https://www.nirb.ca/project/125767> or by searching the following (NIRB Doc ID: 345707) .

PARTIES' COMMENTS ON THE MOTION

On June 20, 2023, the NIRB solicited comments from parties to file written comments in response to the Motion on or before July 5, 2023. By the deadline, the NIRB received comments from the parties listed in Table 1 regarding the Motion. A summary of submissions is provided below in [Table 2](#), and complete submissions were circulated on July 14, 2023.

Table 1: List of Commenting Parties

Commenting Party	Document ID
Qikiqtani Inuit Association (QIA)	346037
Government of Nunavut (GN)	346035
Government of Canada ² (GoC)	346036

Parties are advised that the summaries provided in [Table 2](#) are not exhaustive and have been provided in this format for the convenience of reviewers. The full documents were considered by the Board in their decision-making and are available in their entirety from the NIRB's Public Registry by clicking on the following link: <https://www.nirb.ca/project/125767> and searching the NIRB Document ID No. provided.

Table 2: Summary of Comments Received on the Motion

Commenting Party	Summary of Comments
QIA	<ul style="list-style-type: none"> ▪ Supports the Motion ▪ QIA encourages full participation by community members. Some constraints of the meetings are within the NIRB's control, such as requiring the proceedings to be in-person. With the cost of travel and limitations to accommodations, not all parties may have their technical support to address community comments, which can be solved if remote participation was an option.
GN	<ul style="list-style-type: none"> ▪ Has no objection to the Motion ▪ The GN respects the NIRB's authority and discretion and does not object to their presentation being recorded. The GN will also be at both locations should presentations in Pond Inlet be encouraged.
GoC	<ul style="list-style-type: none"> ▪ Takes no position with respect to the Motion ▪ The GoC supports an approach that enables meaningful Inuit participation and recognizes the value of presentations and opportunities for Inuit to receive information, understand the Proposal, share views, and ask questions.

² Filed by the Northern Projects Management Office on behalf of Crown-Indigenous Relations and Northern Affairs Canada, Environment and Climate Change Canada, Fisheries and Oceans Canada, Health Canada, Natural Resources Canada, Parks Canada, and Transport Canada.

THE BOARD'S CONSIDERATION OF THE MHTO's MOTION

The MHTO's Motion asserts that procedural fairness requires the Board to ensure interested members of the public in Pond Inlet have access to video recordings of the 10-minute summary presentations of interested parties provided during the Community Roundtable session in Iqaluit because:

- The Proponent will be making a presentation about the SOP and FEIS Addendum at both the Iqaluit and Pond Inlet sessions; and
- Pond Inlet is potentially the most impacted community and the public in Pond Inlet should receive the same information in oral form as Community Representatives in attendance at the Iqaluit session.

Is this step required to meet the procedural fairness obligations of the Board?

It is accepted law that the Board is the “master of its own procedure” and is entitled to establish a procedure that reflects the circumstances of each assessment that fulfills the Board's procedural fairness obligations and support the Board's decision-making.

In respect of the Board's process to assess the SOP, the Board determined that it was appropriate to limit the Parties providing technical comments on the SOP and FEIS Addendum to providing their comments in written format only based on the following factors:

- This approach is consistent with the prior practice of the Board during the previous assessments of similar modifications to the Mary River Project;
- The scope of the changes to existing operations proposed in the SOP is limited and builds on the record from previous assessments and from the on-going monitoring of the Mary River Project; and
- It is expected that there will be a limited amount of new information relevant to the SOP that will be put before the Board in decision-making.

As such, the Board did not consider it necessary to conduct a Public Hearing to support the Board's decision-making in relation to the SOP. Consequently, as stated clearly in the procedural guidance given to the parties in the May 8 Notice of Reconsideration and subsequently reiterated in procedural updates, the Board's objective in conducting the Community Roundtable sessions is solely to provide an opportunity for designated Community Representatives (in Iqaluit) and members of the public (in Pond Inlet) to speak directly to the Board. The process was designed to maximize the time available for the Board to hear directly from the 7 (seven) potentially affected North Baffin communities, with an emphasis on hearing directly from the residents of Pond Inlet as the community closest and potentially most affected by the Proposal.

With respect to the opportunity of the Proponent, Baffinland, to present the SOP and FEIS Addendum at the start of the Community Roundtable sessions, parties are reminded that this is a standard practice and is viewed by the Board as necessary to conduct an efficient and procedurally fair Community Roundtable. Baffinland's overview presentation of the SOP ensures that before Community Representatives and interested members of the public share their knowledge and views with the Board about the SOP they will have heard directly from Baffinland about what

changes to the Mary River Project are being proposed. This process also recognizes that Baffinland bears the onus of proof in the Board's process, and reflects that due to this onus, the Proponents of projects under assessment have a higher level of participation rights compared to other Parties (e.g. Proponents have the right and obligation to present their Proposal, they are afforded the right to reply last to the comments of other Parties, etc.).

In including time on the Agenda for Parties who are in attendance at the Iqaluit session and filed written comments about the SOP and FEIS Addendum to provide a short (10-minute) summary of their comments, the Board was simply hoping to provide delegated Community Representatives with a greater understanding of the nature and scope of the comments provided to the Board about the SOP and to help Community Representatives identify if they have questions for those Parties in attendance in addition to Baffinland.

In setting this process, the Board was aware that not all commenting parties will be able to attend the in-person Community Roundtable session in Iqaluit, and as such, the summary presentations are being provided for the background of the delegated Community Representatives and are confined to the summary of the written comments about the SOP that were already filed by parties with the Board. Any Party unable to attend and present a summary presentation in Iqaluit will not be disadvantaged by their absence.

Logistical and practical constraints

Although the MHTO Motion suggests that it is a simple matter to make a video recording of parties making their presentation, such logistics are not simple. To ensure that the public subsequently viewing the video in Pond Inlet is truly getting the same information as the Community Representatives in Iqaluit, the Board cannot simply do a single camera single audio feed recording. As simultaneous interpretation is being provided during the presentations in Iqaluit, there would be two versions of each presentation--one with English audio and one with Inuktitut audio. In addition, because parties generally rely on projecting presentation materials, there are also two video feeds required to allow for both the presenter and the presentation materials to be viewed. With the current audio/visual set up for the Iqaluit and Pond Inlet sessions, the Board does not have the equipment or budget to add the equipment and personnel necessary to make a full and proper recording of the presentations in both languages for subsequent viewing.

The Board also understands that some Parties have advised the Board they would be able to attend and present their summaries in-person at both the Iqaluit and Pond Inlet sessions if recording presentations in Iqaluit is not feasible. While the Board appreciates this offer, the Board notes there are logistical limits on the availability of both accommodations and the community hall in Pond Inlet this summer that have resulted in the Board only being able to secure the venue in Pond Inlet for proceedings on August 1 and 2. As such, the Board has no flexibility to extend the proceedings beyond August 2. Also recognizing the direction of the Minister, and indications from Baffinland and other commenting parties, to meet the current August/September timeline for decision-making

the Board must close the period of gathering information by the end of the Community Roundtable on August 2nd.

In addition, the Board's procedure for the Pond Inlet proceedings was designed to maximize the number of interested residents of Pond Inlet who have an opportunity to speak directly to the Board during this two-day session of the Community Roundtable. The Board notes that adding time to the Agenda in Pond Inlet to either play recordings of the Iqaluit summary presentations or to have Parties make their summary presentations in-person will take time away from the public who wish to share their knowledge, perspectives, and questions about the Proposal with the Board. Reflecting these practical and logistical constraints, the Board has **not granted** the MHTO's Motion and will **not be adding time** to the Agenda during the Community Roundtable session in Pond Inlet to replay the 10-minute summary presentations provided by interested parties during the Community Roundtable session in Iqaluit.

However, through the MHTO's Motion and the comments on the Motion provided by interested parties, the Board understands that, for a variety of reasons, there may be significant interest in the public and interested parties being able to listen in to the proceedings during the Iqaluit and Pond Inlet sessions of the Community Roundtable. To accommodate this interest, the Board will set up (through a laptop connected to MS Teams in the venue) two "listen only" telephone lines that can be used to listen to the audio feed from the live proceedings. Closer to the start of the Community Roundtable sessions, the Board will circulate the access information for two dedicated telephone lines for interested parties to phone in to hear either the English feed or the Inuktitut feed of the proceedings in Iqaluit and Pond Inlet. Parties are advised that this access will enable parties to hear the proceedings only, and if there are problems or interruptions to these audio feeds during the Community Roundtable sessions, the in-person proceedings would not be interrupted and would continue as planned without the audio feeds.

THE BOARD'S DISPOSITION OF THE MHTO'S MOTION

After weighing all the parties' submissions and the preceding analysis the Board dismisses the MHTO's Motion on the following grounds:

- As the Proponent of the SOP, Baffinland bears the onus of proof, and accordingly, their presentation of the SOP and FEIS Addendum in both venues is appropriate and consistent with their procedural fairness rights and the Board's standard practice during Community Roundtables;
- The rationale for allowing other Parties to provide a 10-minute presentation summarizing their written comments is for the convenience of the delegated Community Representatives; the presentations are not to be used by these Parties to add to, or modify their written comment submissions already filed with the Board, and no Party will be disadvantaged by not having been able to make a presentation in Iqaluit or have a recorded version of their presentation replayed in Pond Inlet; and
- Due to significant logistical and time constraints to the Board's process in Pond Inlet, the addition of time to the Agenda for parties to present their summary of comments (either via a recording or in-person) would reduce the time available for the residents of Pond Inlet

to share their views directly with the Board, and this would run contrary to the Board's objectives for this session.

CLOSURE

Should you have any questions regarding the Board's procedural direction in respect of these matters or the upcoming Community Roundtables, please contact the NIRB's *Interim* Executive Director, Ryan Barry at rbarry@nirb.ca.

Sincerely,



Marjorie (Kaviq) Kaluraq
Chairperson
Nunavut Impact Review Board

cc: Mary River Distribution List
Megan Lord-Hoyle, Baffinland Iron Mines Corporation