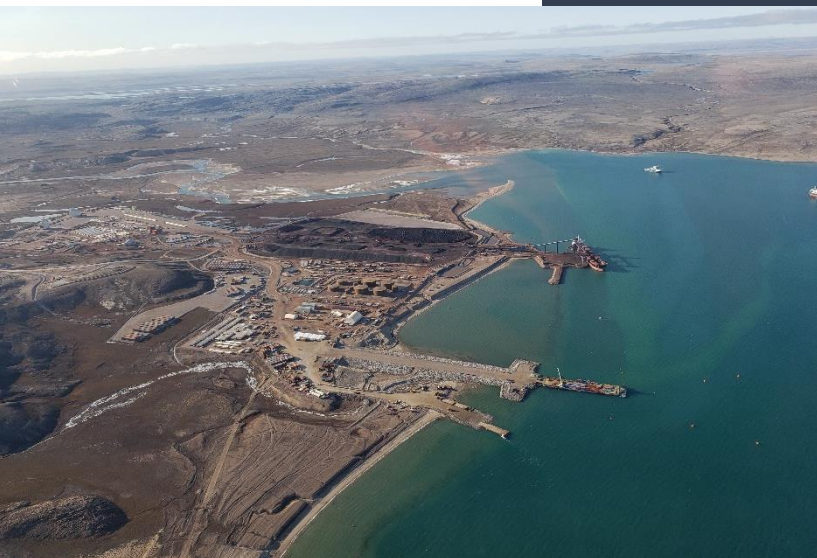


Record of Proceedings and Disposition of Motions Report for the November 2019 Public Hearing

Phase 2 Development Proposal

Baffinland Iron Mines Corporation

NIRB File No. 08MN053



December 2019



In carrying out its functions, the primary objectives of NIRB shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of residents of Canada outside the Nunavut Settlement Area.

23(1) The Board must exercise its powers and perform its duties and functions in accordance with the following primary objectives:

(a) to protect and promote the existing and future well-being of the residents and communities of the designated area; and

(b) to protect the ecosystemic integrity of the designated area.

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COVER LETTER

NIRB File No.: 08MN053

December 16, 2019

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EXECUTIVE SUMMARY

This Record of Proceedings and Disposition of Motions Report (Report) is provided by the Nunavut Impact Board (NIRB or Board) to provide a written summary of process and procedure to date in respect of the Board's assessment of Baffinland Iron Mines Corporation's (Baffinland or Proponent) proposed Phase 2 Development Proposal (the Proposal), a modification to the previously-approved Mary River Project and the associated reconsideration by the Board of the terms and conditions in NIRB Project Certificate No. 005. This Report also provides the Board's direction regarding the process, procedure and timeline to govern the next steps in the continuation of the Board's assessment of the Proposal. The Board emphasizes that the focus of this Report is procedural only and the Report does NOT address the substance of the Board's assessment of the Proposal and reconsideration of the terms and conditions of Project Certificate No. 005.

Reflecting this focus, the Report is provided to all parties for the following purposes:

- To provide an up to date record of the procedural history and Record of Proceedings associated with the technical sessions of the Public Hearing conducted by the Board on November 2-6, 2019 in Iqaluit to consider the potential ecosystemic and socio-economic impacts of the Proposal (the Hearing);
- To provide a written summary of the Board's direction with respect to the disposition of motions and preliminary matters that were dealt with at the Hearing;
- To provide the Board's disposition with respect to the motion of Nunavut Tunngavik Incorporated (NTI) presented at the Hearing on November 6, 2019 to suspend the continuation of the Hearing for a period of nine to twelve (9-12) months;
- To provide all parties with the Board's procedural direction regarding the future processes and timing associated with the Board's continued assessment of the Proposal; and
- To provide a summary listing of the outstanding questions deferred by participants during the Hearing, with the expectation that parties will follow up to file written responses to the questions that remained unanswered as of the adjournment of the Hearing on November 6, 2019.

First and foremost, the Board notes that it is regrettable that the time for the technical sessions conducted during the Public Hearing in Iqaluit (November 2-6) was insufficient to facilitate a full and fair discussion of all technical issues associated with the assessment of the Proposal. As the technical record was incomplete, with less than half of the technical presentations and questioning having concluded by the end of the Hearing on November 6, as requested by several parties, the Board cancelled the subsequent Community Roundtable in Pond Inlet scheduled for November 8 and 9. While the Board recognizes that the community of Pond Inlet may have been disappointed with the cancellation of this session on such short notice, the Board agreed with the parties requesting the cancellation that there was limited utility in conducting the Community Roundtable on the basis of the incomplete technical record coming out of the Hearing.



December 2019/ January 2020	CIRNAC to work with Intervenor to update participant funding agreements and provide additional required funding.
February 6, 2020	Intervenor and interested parties provide updated technical review submissions (if they so chose)
February 13, 2020	Baffinland provides a reply to updated technical review submissions (if they so chose)
February 25, 2020	Baffinland files any presentation materials they intend to present during the Technical Meeting/Pre-Hearing Conference
March 2020	NIRB hosts 5 day Technical Meeting
Immediately following TM	NIRB hosts 3 day PHC and Community Roundtable

During the Pre-Hearing Conference, the Board will facilitate a discussion of the continuation of the Public Hearing proceedings, including a discussion of the timing, venue and format of the continued proceedings. A short time following the conclusion of the Pre-Hearing Conference, the Board will issue a Pre-Hearing Conference Decision and, if applicable, a Notice of the continuation of the Public Hearing, providing all parties with guidance regarding the continuation of the Public Hearing and the Board’s anticipated timeline for decision-making with respect to the Proposal.

Although the Board recognizes that parties and the public may wish to have certainty regarding the timing and form of the continuation of the Hearing, recognizing: that parties have identified that uncertainty and significant information gaps exist in relation to the assessment of the Proposal; that Intervenor have been challenged to have adequate time to review and translate information; and that, overall, there is a lack of understanding and trust in the process, the Board has directed that the scheduling of the continuation of the Hearing must await the outcome of the discussions of technical and procedural issues during the upcoming TM/PHC. In the interim, as part of, or in parallel to the Board’s processes, the Board encourages all parties are to work together to ensure that as the assessment continues:

- the Board is provided with a clear picture of the views of Baffinland and the Intervenor regarding resolved and outstanding technical issues;
- the communities affected by the Proposal are provided with the information, including translated materials, they require to fully understand the Proposal and the potential for the Proposal to have ecosystemic and socio-economic effects; and

- the Intervenor and communities affected by the Proposal are engaged so that their views, concerns and questions about the Proposal can be identified, considered and addressed in a pro-active and collaborative fashion.

With respect to the Board's coordination of their consideration of the Phase 2 Development Proposal with the December 6, 2019 request by Baffinland asking the Board to consider extending the term of the 6 Million tonne per year Production Increase Proposal (6 Mt/pa Proposal) from the current expiry of December 31, 2019 until the Board's assessment and Minister's consideration of the Phase 2 Development Proposal has been concluded, the Board will be issuing separate correspondence to address the process and procedure associated with the Board's consideration of the 6 Mt/pa Proposal.

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1. INTRODUCTION

1.1 Purpose of this Report

On November 2-6, 2019 the Nunavut Impact Board (NIRB or Board) held an in-person Public Hearing focused on the technical assessment of Baffinland Iron Mines Corporation's (Baffinland or Proponent) proposed Phase 2 Development Proposal (the Proposal), a modification to the previously-approved Mary River Project and the associated reconsideration by the Board of the terms and conditions in NIRB Project Certificate No. 005 (the Hearing). In the two weeks leading to the Hearing, and during the Hearing, several parties brought formal motions or made requests to alter the Board's process and procedure associated with the Hearing in Iqaluit and the subsequent Community Roundtable component of the Hearing scheduled to take place on November 8 and 9 in Pond Inlet. The Board emphasizes that the focus of this Report is procedural only and the Report does NOT address the substance of the Board's assessment of the Proposal and reconsideration of the terms and conditions of Project Certificate No. 005.

The Report is provided to all parties for the following purposes:

- To provide an up to date record of the procedural history and Record of Proceedings associated with the technical sessions of the Public Hearing conducted by the Board on November 2-6, 2019 in Iqaluit to consider the potential ecosystemic and socio-economic impacts of the Proposal (the Hearing);
- To provide a written summary of the Board's direction with respect to the disposition of motions and preliminary matters that were dealt with at the Hearing;
- To provide the Board's disposition with respect to the motion of Nunavut Tunngavik Incorporated (NTI) presented at the Hearing on November 6, 2019 to suspend the continuation of the Hearing for a period of nine to twelve (9-12) months;
- To provide all parties with the Board's procedural direction regarding the future processes and timing associated with the Board's continued assessment of the Proposal; and
- To provide a summary listing of the outstanding questions deferred by participants during the Hearing, with the expectation that parties will follow up to file written responses to the questions that remained unanswered as of the adjournment of the Hearing on November 6, 2019.

1.2 Procedural History

As noted above, the Board's assessment of the original version of the Phase 2 Development Proposal (involving increased trucking of ore along the existing Tote Road, but not including the construction and operation of the North Railway line) and associated reconsideration of the Mary River Project Certificate No. 005 commenced in October 2014. In February, 2016, prior to submitting the Final Environmental Impact Statement (FEIS) Addendum, Baffinland provided notice to the NIRB that the Phase 2 Development Proposal had been modified to change the preferred ore transportation option from the increased use of



Date	Party	Process Steps	Notes
August 27, 2015	NIRB	Confirm proposal required amendment to the NIRB Project Certificate	Input received from Qikiqtani Inuit Association, Government of Nunavut, Aboriginal Affairs and Northern Development Canada, Environment Canada, Fisheries and Oceans Canada, Natural Resources Canada, Parks Canada, Transport Canada, World Wildlife Fund, and Helen Gerson. NIRB determines that amendment to Project Certificate No. 005 required.
October 6, 2015	NIRB	Issued Amended <i>Guidelines for the preparation of a Final Environmental Impact Statement (FEIS) Addendum</i> to Proponent	Input received from Qikiqtani Inuit Association, Government of Nunavut, Aboriginal Affairs and Northern Development Canada, Environment Canada, Fisheries and Oceans Canada, Natural Resources Canada, Parks Canada, and Transport Canada.
February 16, 2016	Baffinland	Notice of preferred option change, possible change of scope for proposal	Prior to submitting the FEIS Addendum, Baffinland provided notice to NIRB that the preferred option changed from use of the Tote Road to transport by Northern Railway.
February 22, 2016	NIRB	Request to Minister for clarification if exemption continued to apply	NIRB requested clarification from Minister of Aboriginal Affairs and Northern Development whether previous exemption applies to updated scope and preferred option.
October 4, 2016	Responsible Minister	Confirmation that previous exemption continues to apply only if scope change non-significant	Minister provides clarification that exemption continued to apply to scope change that were non-significant, however several differing perspectives were provided if changes to this land-based method of ore transport would be significant and left it to the Board to determine if the change was a significant modification to the proposal.
November 31, 2016	Baffinland	Complete updated scope provided	On October 28, 2016 NIRB requested Baffinland clarify the activities being considered in the Phase 2 Development proposal; Baffinland updated scope.



Date	Party	Process Steps	Notes
December 19, 2016	NIRB	Issued notice of scope change; proposal referred to Commission	NIRB determines that the change to scope for the Phase 2 Development is a significant modification and refers Baffinland to the Commission as required under NuPPAA s. 141.
May 29, 2018	Nunavut Planning Commission	Conformity determination issued with referral to the NIRB for assessment	Phase 2 Development proposal received positive conformity determination to North Baffin Regional Land Use Plan. Proposal determined to be a significant modification to project and required amendment to Project Certificate No. 005.
June 11, 2018	NIRB	Notice of Assessment and confirmation of applicability of Amended Guidelines	NIRB provided direction to parties on the processing of modification applications including the Phase 2 Development proposal, confirmed previous Guidelines were still adequate in providing direction on requirements of the FEIS Addendum.
August 23, 2018	Baffinland	FEIS Addendum submitted with request for NIRB/ NWB coordinated assessment	Following the original request for a coordinated assessment process, on September 10, 2018 Baffinland clarified that it was seeking coordination in the form of a joint technical meeting and separate but consecutive public hearings.
September 14, 2018	NIRB	FEIS Addendum not accepted	NIRB provided notice that the submission did not fulfill the requirements of the Guidelines; specifically, additional information required on Environmental Management Plans, increased accuracy of references in concordance table, and ambiguity in content.
October 3, 2018	Baffinland	Submission date for revised FEIS Addendum provided	Additional detail on updates to the Addendum provided with submission; NIRB received complete document by October 5, 2018 and initiated internal conformity check discussions with NWB.
October 10, 2018	NIRB	Internal conformity check of FEIS Addendum	NIRB provided Baffinland additional direction on conformity check of FEIS Addendum.



Date	Party	Process Steps	Notes
October 12, 2018	NIRB/NWB	NIRB accepts FEIS Addendum and initiates technical review process NWB initiates completeness check of application	NIRB/NWB joint letter of acceptance of the revised FEIS Addendum and receipt of application for amendment to Water Licence. <ul style="list-style-type: none"> NIRB initiates technical review by requesting parties submit information requests NWB requested parties comment on completeness of application Process map provided to demonstrate steps to coordinated process for parties.
November 2, 2018	QIA	Extension on deadline for IRs requested	Additional time was requested to ensure effective participation of the Inuit members; NIRB granted extension to November 23, 2018 as requested.
November 23, 2018	Parties	Information Requests (IRs) submitted to NIRB	IRs submitted by Qikiqtani Inuit Association (QIA), Government of Nunavut (GN), Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), Environment and Climate Change Canada (ECCC), Fisheries and Oceans Canada (DFO), Health Canada (HC), Natural Resources Canada (NRCan), Parks Canada (PC), Transport Canada (TC), Oceans North (ON), World Wildlife Fund (WWF).
December 11, 2018	CIRNAC/NIRB	CIRNAC Participant Funding Notice distributed	NIRB distributes participant funding guide and applications on behalf of CIRNAC, completed applications due January 11, 2019. CIRNAC provides update on funds awarded on March 6, 2019 and May 27, 2019. Pond Inlet Hamlet, Mittimatalik HTO, Igloolik Community Working Group, Hall Beach HTA, and NITV awarded funding.
December 21, 2018	NIRB	Technical Review commenced	Following receipt of Baffinland's responses to IRs, NIRB initiated the technical review period. NIRB process proceeding while NWB application completeness check required additional time.
January 25, 2019	QIA	Extension to deadline for Technical Review comments	Provided with several justifications to extend the comment period by 14 days, the NIRB found these justifications reasonable and extended the deadline for technical comments to March 7, 2019.



Date	Party	Process Steps	Notes
January 15-30, 2019	NIRB	Community Information Sessions held in potentially impacted communities	Afternoon and evening sessions held in Pond Inlet, Clyde River, Arctic Bay, Resolute, Grise Fiord, Hall Beach and Igloolik. NIRB staff, NWB, Government of Canada, Government of Nunavut, and Isuma TV representatives accompanied tour. Report issued May 7, 2019.
February 4, 2019	NIRB	Updated process issued	In response to concerns raised by the Northern Projects Management Office and QIA, with input from Baffinland, and considering the NWB's determination of the application being incomplete, the NIRB provided an updated process map for the guidance of parties.
February 12, 2019	NIRB	Notice of Technical Meeting	Notice provided of Technical Meeting to be held April 8-10, 2019 in Iqaluit, NU. Draft Agenda circulated to parties on March 1, 2019 and final version circulated on March 28, 2019.
March 7, 2019	Parties	Technical review comments submitted	Comments received from the QIA, GN, CIRNAC, ECCC, DFO, HC, NRCAN, PC, TC, ON, and WWF.
March 29, 2019	Baffinland	Response to comments submitted	Baffinland provided response to parties' technical review comments.
April 8-10, 2019	NIRB	Technical Meeting held	NTI, QIA, GN, CIRNAC, ECCC, DFO, HC, NRCAN, PC, TC, ON, and WWF and Baffinland attended in-person meeting in Iqaluit.
April 18, 2019	NIRB	Notice of second Technical Meeting	Due to the number of outstanding issues parties requested a second technical meeting; NIRB scheduled a second meeting in Iqaluit June 17-19, 2019. Draft Agenda circulated on April 29, 2019 and final version circulated on June 6, 2019.



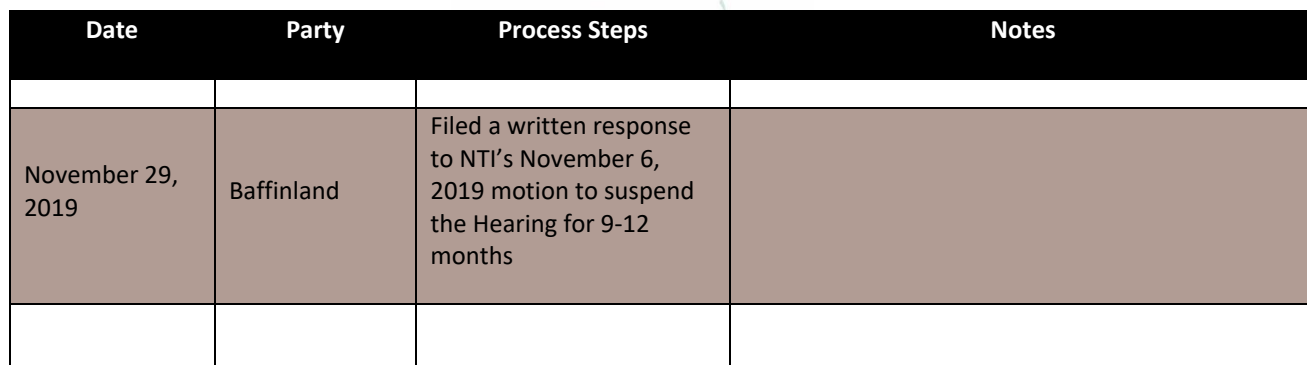
Date	Party	Process Steps	Notes
May 27, 2019	NIRB	Update to Public Hearing Logistics	Parties notified that due to limited accommodations the Public Hearing would be held both in Iqaluit and Pond Inlet. NIRB encouraged Intervenor to contact CIRNAC to update participant funding contracts as may be required.
June 17-19, 2019	NIRB	Second Technical Meeting held	NTI, QIA, GN, CIRNAC, ECCC, DFO, HC, NRCan, PC, TC, ON, and WWF and Baffinland attended in-person meeting in Iqaluit.
June 28, 2019	Baffinland	Commitment list provided	Updated commitment list from Technical Meetings provided.
July 25, 2019	NIRB/NWB	Joint correspondence provided to update parties on timing of events and expectations for coordination	<p>Following the NWB's Notice of Application (May 16, 2019) and request for teleconference with parties to determine options for scheduling of the NWB technical meeting, both the NIRB and NWB received a request on July 4, 2019 from Baffinland to delay the NIRB's hearing to the week of November 4, 2019 and NWB's technical meetings following the NIRB hearing.</p> <p>Joint NIRB/NWB correspondence provided to update parties on timing of events and expectations for coordination; specifically, a NIRB Public Hearing on November 2-9, 2019 and subsequent NWB technical meeting the following week.</p>
August 21, 2019	NIRB	Notice of Public Hearing	Public hearing dates of November 2-9, 2019 circulated with requests for intervenors, and request for final written submissions. Request for Intervenor note Inuit organizations, regulators, and groups that received participant funding to participate in the hearing would be granted Intervenor status (Pond Inlet Hamlet and Mittimatalik HTO, Igloolik Community Working Group, Hall Beach HTA, and NITV).



Date	Party	Process Steps	Notes
August 29, 2019	NIRB	Notice of Site Visit for the NIRB's Board and Intervenor	Baffinland provided a tour of the Mary River site on September 21, 2019; report issued October 22, 2019.
September 6, 2019	Parties	Request for Intervenor status submitted to the NIRB	Intervenor applications received from Nunavut Independent Television Network (NITV), Oceans North, World Wildlife Fund; NIRB grants Intervenor Status to these organizations on September 6, 2019.
September 16, 2019	NIRB	Draft Public Hearing Agenda circulated	Draft agenda provided to parties for comment; final agenda released October 10, 2019.
September 24, 2019	NIRB	Request for community representatives to attend the Public Hearing	Correspondence sent to Pond Inlet, Resolute Bay, Grise Fiord, Arctic Bay, Igloolik, Clyde River, Hall Beach, and Iqaluit seeking nomination of 5 representatives per community.
September 27, 2019	Intervenors	Final written submissions (FWS) submitted to NIRB	FWS received from QIA, Hamlet of Pond Inlet, Mittimatalik HTO, GN, CIRNAC, ECCC, DFO, HC, NRCan, PC, TC, ON, WWF, and NITV.
October 17, 2019	Baffinland	Responses to FWS provided	
October 29, 2019	NIRB	Procedural Guidance provided	As a result of Oceans North and Mittimatalik HTO submitting separate motions for the Hearing, as well as the Hamlet of Pond Inlet and Oceans North requesting additional time for Dr. J. Loxley to present his paper, the NIRB provided clarification to parties on expectations for the Hearing. In addition, NTI requested additional time to present at the hearing.



Date	Party	Process Steps	Notes
November 2-9, 2019	NIRB	Public Hearing held, including Technical sessions and Community Roundtable	Parties represented at the hearing included: Baffinland, NTI, QIA, Hamlet of Pond Inlet, Mittimatalik HTO, Igloolik Working Group, Hall Beach HTO, GN, CIRNAC, ECCC, DFO, HC, NRCan, PC, TC, ON, WWF, and NITV, residents of Iqaluit, and designated representatives from Pond Inlet, Resolute Bay, Grise Fiord, Arctic Bay, Igloolik, Clyde River, Hall Beach. Technical and Community Roundtable sessions were scheduled for Iqaluit, with additional Community Roundtable sessions in Pond Inlet.
November 6, 2019	NTI/Intervenors		NTI brought a motion to suspend the Public Hearing for a period of 9-12 months.
November 6, 2019	NIRB	NIRB extended the Public Hearing, cancelled the Community Roundtable scheduled for November 8 and 9 in Pond Inlet and adjourned completion of the Public Hearing pending the consideration of the NTI Motion	<p>Submissions from parties were requested regarding the NTI Motion, including addressing the length of the suspension of the Public Hearing and additional process steps required, in accordance with the following timeline:</p> <ul style="list-style-type: none"> Intervenors to file on or before November 15, 2019 Baffinland to file on or before November 22, 2019
November 21, 2019	Baffinland	Requested a one-week extension to the timeline for filing the written response to NTI's November 6, 2019 motion	The basis for Baffinland's request to file their response on November 29, 2019 was to allow Baffinland to meet with potentially affected communities to discuss next steps and timelines
November 22, 2019	NIRB	Issued correspondence granting Baffinland's extension request	

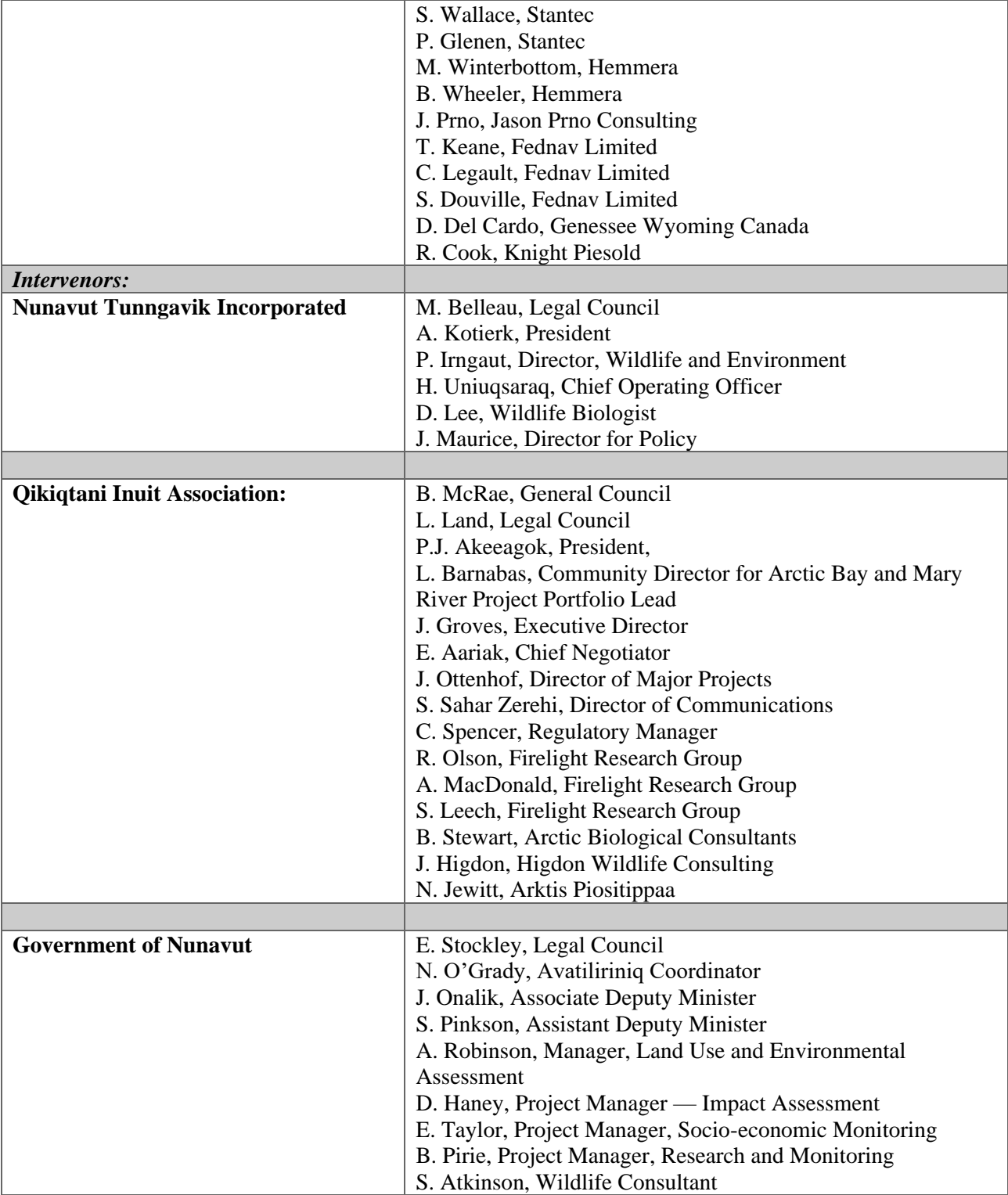


[Table 4](#) below provides a summary of the Record of Proceedings from the technical sessions of the Public Hearing associated with the Phase 2 Development Proposal held on November 2-6, 2019 in Iqaluit.

Project Proponent:	Baffinland Iron Mines Corporation 2275 Upper Middle Road East, Suite 300 Oakville, Ontario, Canada L6H 0C3
Date Updated Project Description of the Proposal Received:	October 3, 2018
Positive Conformity Determination Received from the Nunavut Planning Commission:	May 29, 2018
Dates of Hearings:	Day 1: November 2, 2019, Iqaluit, NU Day 2: November 3, 2019, Iqaluit, NU Day 3: November 4, 2019, Iqaluit, NU Day 4: November 5, 2019, Iqaluit, NU Day 5: November 6, 2019, Iqaluit, NU Day 6: November 8, 2019, Pond Inlet, NU (Cancelled) Day 7: November 9, 2019, Pond Inlet, NU (Cancelled)
Board Members Present:	Kaviq Kaluraq, Acting Chairperson Madeleine Qumuatuq, Board Member Guy Alikut, Board Member Catherine Emrick, Board Member Uriash Puqignak, Board Member



NIRB Staff:	R. Barry, Executive Director T. Arko, Director, Technical Services Solomon Amuno, Technical Advisor II Cory Barker, Technical Advisor I Mark Ings, Director, Finance and Administration
NIRB Legal Counsel:	T. Meadows, Meadows Law
Interpreters:	J. Tucktoo, Interpreter (NIRB) Leah Kilabuk, Interpreter (NIRB) Veronica Dewar, Interpreter
Court Reporters:	Julie Albert, CSR(A), Dicta Court Reporting Inc. Christy Longacre, RPR, CSR(A), Dicta Court Reporting Inc.
Sound Technician:	B. Beattie, Environmental Technologist (NIRB)
Parties:	
Proponent:	
Baffinland Iron Mines Corporation	C. Kowbel, Legal Council B. Armstrong, Legal Council L. Duke, Legal Council B. Penney, President, Chief Executive Officer M. Lord-Hoyle, Vice President, Sustainable Development L. Kamermans, Director, Sustainable Development A. Moore, Manager, Government Relations and Public Affairs U. Hanson, Vice President, Community and Strategic Development J. Tigullaraq, Head of Norther Affairs E. Malcolm, Sustainability Specialist K. Johnson, Environmental Assessment Specialist F. Pittman Rail Manager C. Devereaux, Environmental Superintendent T. Sewell, Director, Health, Safety, Environment & Security A. Sira, Director, Corporate Human Resources M. Austin, JASCO Applied Sciences P. Osborne, Golder Associates Ltd. T. Thomas, Golder Associates Ltd. C. Moore, Intrinsic F. Van Biljon, Hatch Engineering M. Lepage, RWDI A. Macleod, Environmental Dynamics Inc. M. Settingington, Environmental Dynamics Inc. A. Van Buren, Stantec



	<p>D. Lapierre, Technical Advisor</p> <p>E. Zell, Manager Regulation and Environmental Assessment</p> <p>J. Elliot, Project Manager, Land use Planning</p> <p>D. Bakie, Environmental Assessment Specialist</p> <p>J. Ringrose, Qikiqtani Regional Biologist</p>
Crown-Indigenous Relations and Northern Affairs Canada	<p>S. Dewar, Director, Resource Management</p> <p>F. Ngwa, Manager of Impact Assessment</p> <p>D. Abernethy, Socio-economic Analyst</p> <p>R. Tookoome, Social Policy Officer</p> <p>D Kohnenberg, Legal Council, Department of Justice</p> <p>S. Gruda-Dolbec, Legal Council, Department of Justice</p> <p>A. Chaikine, Senior Environmental Assessment Specialist</p> <p>A. Botfield, Technical Consultant, SNC-Lavalin</p>
Fisheries and Oceans Canada:	<p>T. Hoggarth, Regional Director Ecosystems Management</p> <p>M. D'Aguiar, Senior Biologist</p> <p>M. Janowicz, Regional manager Regulatory Reviews</p> <p>L. Watkinson, Biologist, Fish and Fish Habitat</p> <p>K. Howland, Research Scientist and Invasive Species Specialist</p> <p>M. Marcoux, Research Scientist and Marine Mammal Specialist</p> <p>D. Yurkowski, Research Scientist and Marine Mammal Specialist</p> <p>E. Desantis, Analyst Major Project — National Capital Region</p> <p>K. Knapp, Senior Advisor, Canadian Coast Guard Arctic Region</p>
Environment and Climate Change Canada	<p>G. Williston, Heat Environmental Assessment North</p> <p>G. Bernard-Lacaille, Senior Environmental Assessment Coordinator</p> <p>K. Wells, Senior Air Quality Analyst</p>
Health Canada	<p>M. Gale, Senior Environmental Health Specialist</p> <p>W. Wilson, Environmental Assessment Coordinator</p> <p>J. Boudreau, Environmental Assessment Coordinator</p>
Natural Resources Canada:	<p>P. Unger, Environmental Assessment Division</p> <p>R. Johnstone, Explosives Safety and Security Branch</p>



Parks Canada	A. Stoddart, Environmental Assessment Specialist J. Bastick, Environmental Assessment Specialist J. Boon, Nunavut Field Unit Superintendent J. Chisholm, Nunavut Field Unit Ecologist L. Jonart, Nunavut Field Manager for Tallurutiup National Marine Conservation Area
Transport Canada	A. Gudmundson, Regional Manager Environmental Services J. Johar, Manager Marine Safety and Security J. Cram, Manager Rail Safety Engineering J. Barker, Environmental Advisor
Igloolik Working Group	M. Recinos, Technical Advisor E. Ivvalu, Hamlet Representative P. Ivalu, Hamlet Representative
Hall Beach Hunters and Trappers Organization	D. Arvaluk, HTO Representative
Nunavut Independent Television Network	L. Lipsett, Technical Advisor Z. Kunuk, Founder and Director B. Kunuk, Youth Representative T. Haynes, Audio Technician T. Leblanc-Murray, Camera Technician
Hamlet of Pond Inlet	F. Tester, Technical Advisor I. Akpaliapik, Elder Advisor D. Irngaut, Elder Advisor
Mittimatalik Hunters and Trappers Organization	E. Ootoovak, Chair E. Inuarak, Vice Chair C. Sangoya, Secretary/Treasurer A. Hanson-Main, Technical Advisor
Oceans North	C. Debicki, Vice President Policy Development and Counsel K. Westdal, Director Arctic Field Research A. Ootoowak, Research Technician J. Jones, Scripps Institute of Oceanography
World Wildlife Fund	A. Dumbrille, Senior Specialist Sustainable Shipping P. Okalik, Senior Advisor Arctic Conservation B. Laforest, Senior Specialist Arctic Species and Ecosystems
Community Representatives	
Arctic Bay	Leah Kalluk



	Jobie Attitaaq Cecil Francis May
Clyde River	Samuel Irqqarqsaq Mark Inookie Nookiguak Joamie Apak
Grise Fiord	Imooshee Nutarajuk
Hall Beach	Timothy Kuppaq Peter Siakuluk Iris Qanaksiak Danny Arvaluk
Igloolik	David Irngaut Tyra Claire Qulaut Natalino Piugattuk Ivalu Madeleline Puiyuq
Pond Inlet	Timothy Soucie Ookookoo Quaraq
Resolute Bay	Paul Amagoalik Mark Amarualik
Iqaluit	Meeka Mike Jeetooloo Kakee

3. MOTIONS AND PRELIMINARY MATTERS

At the outset, the Board notes that in Article 12, Sections 12.2.23 to 12.2.27 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada*, (Nunavut Agreement) and ss. 26 and 38 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (NuPPAA) the Board is empowered to make their own Rules of Procedure. As outlined in the *Nunavut Agreement* and the *NuPPAA*, the Board's Rules of Procedure in relation to Hearings must meet the requirements of natural justice and procedural fairness, but should also emphasize flexibility and informality. In addition, in the conduct of Hearings the Board is not bound by the strict rules of evidence associated with court proceedings and must also give due regard and weight to the tradition of Inuit oral communication and decision-making.

The Board recognizes that while parties are entitled to fair hearings procedure, they are not necessarily entitled to the most advantageous or favorable procedure. Recognizing the dual goals of fairness and flexibility, when a party requests a change or deviation from the Board's standard procedures because they view the revised process as preferable in putting forward their case to the Board, the Board is tasked with considering whether the change requested is necessary to ensure a fair hearing. The onus of establishing



that the change meets the requirements of procedural fairness remains on the party or parties making the request. If the Board determines that the normal practice is fair, and the requested change is merely favored by the requested party, the Board may reject the requested change and continue with its normal practice. This is the general approach underlying the Board's specific disposition of the preliminary matters and motions detailed below.

3.1 Preliminary Matter Request by Hamlet of Pond Inlet to Add a Speaker to the Hearing Agenda

On Friday, October 25, 2019, the Board received a request from the Hamlet of Pond Inlet (supported by Oceans North) to add to the Agenda a presentation by John Loxley (an academic at the University of Manitoba) of his paper entitled "the Assessment of the Mary River Project: Impacts and Benefits". This paper had been appended to the Hamlet of Pond Inlet's Final Written Submissions filed with the Board on September 20, 2019.¹ In correspondence on October 25, the NIRB advised parties of the joint request and proposed to add 15 minutes to the Agenda following the Hamlet of Pond Inlet's presentation to allow for this presentation on Sunday, November 3, 2019 after which questioning on both presentations would be permitted. The Board also invited parties to provide their comments with respect to the addition by the end of the day on October 28.

3.1.1 Views of the Parties

On October 28 Baffinland responded,² objecting to the request being made jointly by Oceans North with the Hamlet of Pond Inlet and querying the role of Oceans North in proffering a witness addressing socio-economics, notwithstanding that the scope of the Oceans North intervention being on the potential for ecosystemic effects in the marine environment. Baffinland further noted that this information was better placed as part of the Hamlet of Pond Inlet's presentation on socio-economics, but indicated that even if that was the context within which the information was placed, Baffinland had serious reservations about the paper being presented, as it contained many inaccuracies.

On October 29, the Hamlet of Pond Inlet responded in writing to Baffinland's submission:

We wish to make it clear the request to have Dr. Loxley present at the hearing is not solely an Oceans North initiative. While Oceans North supported the research that informed Dr. Loxley's paper, our technical advisor - currently Adjunct Professor of Native Studies at the University of Manitoba where Dr. Loxley is a Professor of Economics - has had a long-standing familiarity with Dr. Loxley and his work, having used his publications in courses he has taught dealing with financial aspects of

¹ Final Written Submission of the Hamlet of Pond Inlet, dated September 20, 2019, circulated by the Board on September 30, 2019 (NIRB document ID No. 327046).

² Correspondence submitted by Baffinland Iron Mines Corporation in response to the joint request of Oceans North and the Hamlet of Pond Inlet to add a presentation to the Public Hearing Agenda, dated October 28, 2019, circulated by the Board on October 29, 2019 (NIRB document ID No. 327339).



The Nunavut Independent Television Network also supported the Hamlet's request, stating: "*We support the inclusion of this presentation. It is relevant to the theme of benefits that we identified as a priority from our review of community comments and questions in various public meetings over the past months.*"¹²

Baffinland reiterated their objections to the late addition to the Agenda, and also indicated concern that, due to the scheduling of John Loxley's presentation on Tuesday November 5, Baffinland may encounter difficulty in ensuring the appropriate technical experts are available and also noted:

The overall position of Baffinland is set out in the Baffinland letter of October 25. We wish to say this: If some time is given to the Hamlet for this purpose on Tuesday, that should not be additional time; that is, the Board's being asked to provide intervenors with time to present during the community workshops [Community Roundtable].

*The Hamlet can use its time with Dr. Loxley, but they shouldn't be given additional time to eat into the community sessions on Tuesday.*¹³

3.1.2 Disposition by the Board

On November 3, 2019 the Board met to consider the Hamlet's request and determined the following:

- Recognizing that John Loxley's paper had already been filed as part of the Hamlet of Pond Inlet's written submissions, all parties had notice of the content of his work in advance of his appearance;
- The content of the paper was found to be relevant to the Board's assessment and the information contained within was properly before the Board;
- Baffinland had the opportunity to comment on John Loxley's paper, including identifying concerns with assumptions and corrections of inaccuracies, in Baffinland's written submissions filed in advance of the Hearing with the Board; and
- Following John Loxley's presentation, all parties, including the Proponent, would be given an opportunity to question Dr. Loxley directly regarding his paper and presentation.

Consequently, the Board found the Hamlet of Pond Inlet's request to be reasonable and added time to the Agenda to allow for John Loxley's presentation immediately after the presentation by the Hamlet of Pond Inlet. As indicated at the Hearing, the Board encouraged Baffinland to identify specific concerns with Dr.

¹² L. Lipsett, Nunavut Independent Television Network, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, p. 207, lines 20-24.

¹³ B. Armstrong, Baffinland, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, p. 209, lines 8-17.



Loxley's work during their questioning of him following the presentation. On November 5, 2019, John Loxley appeared before the Board, made his presentation and was questioned by the parties.

3.2 Written Motion by Oceans North

On Monday, October 28, the Board received for filing a Notice of Motion from Oceans North, supported by an Affidavit from a researcher, Georgia Macdonald, who indicated she was working with Oceans North in respect of the Baffinland file (the Oceans North Motion).¹⁴ In the Motion Oceans North requested that the Board suspend the Board's review of the Proposal because Oceans North had identified inconsistencies between information provided by Baffinland during the Board's assessment of the Phase 2 Development Proposal and a Preliminary Offering Circular dated June 18, 2018 that Oceans North indicated was provided by Baffinland to private investors in an effort to raise approximately \$550 million in project funding. Specifically, Oceans North highlighted that Baffinland had suggested to potential investors that they had plans to increase project shipping through Milne Port to 18 million tonnes per year, but the scope of the Proposal under assessment involves an increase to 12 million tonnes of ore shipped per year. Oceans North indicated that this discrepancy meant that Baffinland withheld relevant information in the Final Environmental Impact Statement Addendum (FEIS Addendum) and that the Hearing should be suspended until the additional information provided in the Preliminary Offering Circular was translated and filed on the Board's public registry and parties had been given an opportunity to review and consider the information.

Alternatively, Oceans North requested that the Board identify subsequent dates to hold additional hearings in order to allow parties more time to consider the information in the Preliminary Offering Circular in comparison to the information provided in Baffinland's FEIS Addendum filed for the Proposal. These additional hearing dates would provide Oceans North and other intervenors more time to adequately review the previously unavailable information provided in the Preliminary Offering Circular to prepare updated questions and comment submissions.

The Preliminary Offering Circular dated June 28, 2018 was attached as an Appendix to Ms. Macdonald's Affidavit. Although the Affidavit noted that the Preliminary Offering Circular was not publicly available, Ms. Macdonald indicated that in September 2019, Oceans North obtained a "commercially-available copy from a New York-based service which makes this type of information available to the investment community." Oceans North did not provide any further information regarding the source of the Preliminary Offering Circular and did not identify that the Preliminary Offering Circular was provided under the terms of a confidentiality agreement. The NIRB posted the Notice of Motion from Oceans North, Affidavit of Ms. Macdonald and appended Preliminary Offering Circular on the registry. A short time later, Baffinland contacted the Board and advised that the Preliminary Offering Circular, in its entirety, was a confidential document that should not be publicly disclosed. In response, the NIRB removed the Affidavit and Preliminary Offering Circular from the NIRB's registry, pending Baffinland supplying the Board with information regarding Baffinland's assertion that the Circular was a confidential document. Upon review

¹⁴ Notice of Motion and Affidavit filed by Oceans North dated October 28, 2019 circulated by the Board on October 29, 2019 (NIRB document ID No. 327332).



Ms. Macdonald's Affidavit was reposted to the registry but the Preliminary Offering Circular was not reposted pending the Board's direction after hearing the Motion at the Public Hearing.

3.2.1 Views of the Parties

On October 31, 2019 the Government of Canada (GoC) provided a written response to the Oceans North Motion,¹⁵ indicating the following:

- There may be merit to allowing Oceans North to file the Affidavit of Georgia Macdonald and excerpts of the Preliminary Offering Circular relevant to the Proposal on the public record;
- However, based on the GoC's recognition that phased development is becoming an increasingly common practice, in all project development and that this approach to development is contemplated by the *Nunavut Agreement* and the *Nunavut Planning and Project Assessment Act*, and noting that the scope of the current Proposal under assessment by the NIRB is clearly stated and is limited to an increase to 12 Mt/a, the Oceans North application to suspend or delay the Board's review on the basis that Baffinland may be considering possible plans to seek a further increase to shipping in future is without merit.

It should be noted that the GoC's response was filed before the Baffinland response, so the Government of Canada did not have the benefit of having reviewed Baffinland's excerpt of the Preliminary Offering Circular.

Late in the afternoon of October 31, Baffinland filed both their response to the Oceans North Motion and their assertion that the version of the Preliminary Offering Circular document provided by Oceans North is a confidential document.¹⁶ With respect to the confidentiality claim, Baffinland provided the Affidavit of Fernando Ragone, the Chief Financial Officer of Baffinland who had personal knowledge about the Preliminary Offering Circular.¹⁷ Mr. Ragone indicated that the version of Preliminary Offering Circular provided by Oceans North was an unfinalized draft of the Preliminary Offering Circular which was ultimately released on June 22, 2018. He indicated the Circular is a confidential document which was provided solely for the purpose of offering to a limited number of private investors the opportunity to purchase Bonds in the Mary River Project and was provided under strict terms of confidentiality and securities laws applicable to issuers of private bonds.

With respect to the substance of the Oceans North Motion regarding the inconsistent reference to ore shipping in any given year, appended to Mr. Ragone's was a redacted section of the June 22, 2018

¹⁵ Government of Canada written comments to Oceans North and Baffinland Iron Mines Corporation Notices of Motion dated October 31, 2019, circulated by the Board on November 1, 2019 (NIRB document ID No. 327375).

¹⁶ Baffinland Iron Mines Corporation Response to Motion of Oceans North, dated October 31, 2019, circulated by the Board on November 1, 2019 (document ID number: 327373)

¹⁷ Affidavit of Fernando Ragone (NIRB document ID No. 327372).



Preliminary Offering Circular that referenced the 18 million tonnes per annum shipping in the context of the existing approved project certificate as follows:

We remain committed to a phased approach to major development of our base operations. We have announced plans to increase production to 12 Mtpa [million tonnes per annum] by late 2020 or early 2021 (also known as the Rail Expansion), which is more than 260% of our 2017 production of 4.6 Mt. ... In addition to our current operations, our existing approved project certificate allows for the construction of a railway to a port, southwest of the mine, for a capacity of an additional 18 Mtpa.

Baffinland's response also noted that there was a Technical Report appended to the Preliminary Offering Circular that did review both the 12 Mt/a "base case" that is under assessment in the scope of the Proposal and an 18 Mt/a case, but that the 12 Mt/a base case is the scenario that has been assessed in the scope of the Phase 2 Developmental Proposal and that is the only scenario that is before the NIRB during this assessment. On this basis, Baffinland's position was that the Preliminary Offering Circular is a confidential document that should not be relied upon or posted to the NIRB's public registry and that the Motion by Oceans North to suspend or delay the Board's review of the Phase 2 Development Proposal is without foundation and should be dismissed.

In addition to the receipt of written submissions, during the Hearing on November 3, 2019 the Board invited the Proponent and Intervenor to provide the Board with their views regarding the motion.¹⁸

Oceans North, wished to file additional materials in support of the motion, including a legal opinion regarding privacy issues from John Myers and copies of specific case law attached to the legal opinion.¹⁹ Oceans North also indicated that they took offence at the suggestion by the affiant, F. Ragone that Oceans North obtained the Preliminary Offering Circular by unscrupulous or illegal means and requested the opportunity to cross-examine the affiant on those insinuations.²⁰ Oceans North emphasized that their position was that the information contained in the Preliminary Offering Circular was relevant because it differed in material respects from the 12 Mt/a scenario being assessed by Board, summarizing it as follows:

Now, the discrepancies -- and I'm going to go into them -- between what the proponent has provided in the process, also the -- the production scale that the proponent has suggested is the scale in this -- in this process is, as we've discussed, 12 million tons shipped through Milne Inlet is followed by -- and the timeline is important -- an additional 18 million tons through Steensby.

¹⁸ The full transcript of the discussion of the Oceans North Motion at the Hearing is found in the NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at pp. 130-168.

¹⁹ Note: as these materials were not considered to be relevant to the issues affecting the Board's disposition of the Oceans North Motion, the materials were not filed as Exhibits, other parties were not asked to review or comment on them and the materials are not filed on the Board's registry.

²⁰ C. Debecki, Oceans North, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at pp. 136-137.



Now, the production sequence provided to investors in an attempt to solicit \$550 million of funds was 18 million tons through Steensby -- excuse me -- through Milne followed by an additional 18 million tons through Steensby. Now, both -- both provide -- both documents provide hypothetical expansion beyond that...²¹

Baffinland objected to the filing of the legal opinion of Mr. Meyers and materials in support, and clarified that the test for establishing that commercial information should be held in confidence is relatively easily met. In terms of the substance of the Oceans North Motion, Baffinland indicated that the Preliminary Offering Circular should not be accepted by the Board for filing on the record on the basis of the following grounds:

- The draft provided by Oceans North was a draft document and was not the final version circulated to investors;
- The document, on its face was intended to be confidential;
- Under Rule 38.5 of the NIRB's Rules of Procedure, a party adducing a document must have prepared or ordered the preparation of the document, and must be able to attest to the document's accuracy, neither of which is the case for the affiant, Georgia Macdonald;
- The information contained in the Preliminary Offering Circular contains information which is entirely outside the scope of Oceans North's intervention and expertise.²²

Alternatively, Baffinland indicated that if the Board were to determine that the Preliminary Offering Circular should be accepted into evidence, the document should be kept confidential as permitted under Rule 13 of the Board's Rules of Practice and Procedure.

With respect to aspect of the Oceans North Motion seeking to suspend the Board's consideration of the Proposal, Baffinland noted:

the application before you and the Board is the Phase 2 application. So Oceans North is asking you to suspend your review of Phase 2 because the company -- and you heard Mr. Penney this morning -- the company had -- had studied potentially going to 18 [Mt/a]. That's not a ground for suspending this -- this proposal. It's -- it's perfectly sensible and -- and -- and regular for a mining company to be thinking a few steps ahead about where it will go after -- after an application has been processed for its -- for its current plans.²³

²¹ C. Debecki, Oceans North, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 149, lines 6-20.

²² B. Armstrong, Baffinland, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at pp. 139-141.

²³ B. Armstrong, Baffinland, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 142, lines 4-14.



The Government of Canada stated the following: “Our position is more accurately stated to reflect that it is entirely within the jurisdiction and mandate of the Board to dismiss the motion and that we see that there are reasonable grounds for the Board to dismiss the motion.”²⁴ With respect to the concern expressed by Oceans North that Baffinland is planning to ship 18 Mt/a via Milne Port, the Government of Canada stated the following:

We understand now that Baffinland wishes to have some flexibility in the amount of ore that it would ship from that port.

*This expression of flexibility has caused some concern amongst the federal departments and agencies, and we simply wish to have it clarified to the Board that this flexibility does not involve an increase in production or shipment from the Milne Inlet Port of more than 12 million tons per year. If Baffinland’s intention in having additional operational flexibility beyond 12 million tons per year, our submission would be that that is not the proposal before the Board and that many of the intervenors have not had an opportunity to assess that.*²⁵

The Qikiqtani Inuit Association indicated QIA had not had adequate time to review the documents proposed to be filed by Oceans North, and did not express an opinion about the Oceans North Motion, but indicated: “In the upcoming days, Qikiqtani Inuit Association’s team will be closely reviewing new material present to the Nunavut Impact Review Board to ensure that the interests of Qikiqtani Inuit are protected and respected by all parties.”²⁶ Nunavut Tunngavik Incorporated similarly noted that NTI had not had sufficient time to review the documentation filed in support of the Oceans North Motion. Nunavut Tunngavik Incorporated expressed confidence in the Board’s ability to decide what information is relevant to the assessment of the Proposal, but advised the Board that if the Board did subsequently find the documents to be admissible as evidence that would lead to revisions to the Proposal, then Inuit would require more time to review this information and take it into account.²⁷

The Mittimatalik Hunters and Trappers Organization (MHTO) supported the disclosure of the Preliminary Offering Circular, noting:

...the Hunters and Trappers Organization agrees that materials filed by Oceans North within their notice as they relate to Baffinland’s approach to project development and as provided to its funders/investors should be allowed without restriction on the Nunavut Impact Review Board’s public registry. We would like to know more about the profitability

²⁴ D. Kohlenberg, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 155, lines 7-11.

²⁵ D. Kohlenberg, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at pp. 155-156, lines 19-26 and lines 1-6.

²⁶ J. Ottenhoff, Qikiqtani Inuit Association, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 157, lines 11-15.

²⁷ M. Belleau, Nunavut Tunngavik Incorporated, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 157-158.



*any human being or any animal trying to cross the railway tracks, given that more trains would be barreling down the track, presumably carrying 50 percent more ore to the port of Milne Inlet. It has serious implications for all of us in this room.*³⁰

The Igloolik Working Group also indicated that communities have been challenged to review all the information exchanged as part of the NIRB assessment of the Proposal to date. The Igloolik Working Group further stated:

*... we are in agreement with Oceans North Motion 1 and 2. We feel that we need all of the documentation in front of the Igloolik Working Group for the Igloolik Working Group to make an informed decision on behalf of Igloolik. We feel that even though there was a lot of documents being reviewed, we were trying to do our best to review them, but now we have learned that there's additional documentation that hasn't even been submitted that is truly relevant to the project at hand.*³¹

The Government of Nunavut (GN) indicated that the GN would defer to the Board as to whether the Preliminary Offering Circular should be made available. The World Wildlife Fund (WWF) indicated that the WWF is supportive of the Oceans North Motion, but noted that any additional documents admitted as evidence should be “translated properly, with the documents that are dispersed to the community and not just to be seen by the non-Inuit to read, but also Inuit need to see all the documents translated.”³²

The Nunavut Independent Television Network did not take a formal position on the Oceans North Motion, but stated:

*However, we do support the general points made by a number of intervenors about the importance of trust and transparency as fundamental components to inform consultation with Inuit, and we also underscore the point made by the Government of Canada about the need to clarify what operational flexibility implies for the proponent.*³³

3.2.2 Disposition by the Board

Based on the Board’s consideration of the Affidavits of Ms. Macdonald and Mr. Ragone, and the oral and written submissions of the parties in advance of, and during the Hearing, the Board concluded the following:

- based on the evidence of Mr. Ragone, Baffinland had established that the Preliminary Offering Circular was a confidential document provided under the

³⁰ F. Tester, Hamlet of Pond Inlet, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 162, lines 1-15.

³¹ M. Recinos, Igloolik Working Group, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 164, lines 8-17.

³² P. Okalik, WWF, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 167, lines 21-25.

³³ L. Lipsett, Nunavut Independent Television Network, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 168, lines 7-17.



auspices of a form of confidentiality agreement applicable to private investors and that was not widely or publicly available;

- recognizing that Baffinland had not waived the confidentiality in the Preliminary Offering Circular, the document should not be posted on the Board's public registry;
- recognizing that it is within a given proponent's discretion as to how they choose to develop a project, and that phased/incremental development of mines is commonplace and contemplated under the Board's powers to reconsider significant modifications to previously-approved projects, Baffinland's communication about future plans for an increase to ore shipment beyond the 12 Mt/a scenario that is the basis for the assessment of the Phase 2 Development Proposal is not unusual and is typical of the type of project planning the Board has seen in respect of other mining projects developed in phases;
- Baffinland's statements about the potential for a further future increase and any inconsistencies between statements of future plans in the Preliminary Offering Circular do not change the scope of the increase to the annual ore shipping rate of 12 Mt/a via Milne Port that is currently being assessed under the Proposal; and
- As noted by the Government of Canada, if, in future Baffinland wished to significantly modify the project to increase ore production and shipping via Milne Port beyond the scope of what has been assessed by the NIRB, such increases would likely constitute significant modifications that would be required to undergo additional assessment.

On this basis, the Board concluded that the Preliminary Offering Circular did not contain information that was relevant to the Board's assessment of the Proposal as limited to annual shipping of 12 Mt/a. As summarized at the Hearing:

...the Board has concluded Baffinland's communications about financing and forward-looking statements about eventual expansion plans is not relevant and will not assist the Board in assessing the potential ecosystemic and socio-economic effects associated with the Phase 2 development project currently before the Board.³⁴

Further, the Board determined that the Preliminary Offering Circular was provided in confidence to investors under the auspices of confidentiality agreements and that Baffinland had not waived this confidentiality, and as such the Preliminary Offering Circular was not properly before the Board and should not be referred to by parties during the Hearing nor posted on the NIRB's public registry.

3.3 Written Motion by Baffinland Iron Mines Corporation

³⁴ K. Kaluraq, Acting Chairperson, Nunavut Impact Review Board, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 2, November 3, 2019, p. 326, lines 3-9.



On Monday, October 28 the Board received a Notice of Motion and Affidavit of Brian Penney, the Chief Executive Office at Baffinland.³⁵ The Notice of Motion requested that the Board consider receiving an 11 page document summarizing information contained in Baffinland's audited financial statements which explains the financial viability and economics of the Mary River Project (the Economic Summary) in confidence for the Board's consideration only and without posting on the public registry. The basis for Baffinland's assertion of confidentiality is that the public disclosure of the Economic Summary:

- Could have a negative impact on Baffinland's negotiating leverage with financiers or underwriters
- May limit Baffinland's marketing efforts to potential investors if viewed out of context;
- Contains sensitive information that could affect Baffinland's competitive position with respect to other market participants;
- May compromise Baffinland's negotiating position with goods and service supplies, as well as customers; and
- May compromise Baffinland's negotiating position with respect to hiring at the executive level.

3.3.1 Views of the Parties

On October 31, 2019, the Government of Canada (GoC) filed a written response to Baffinland's Notice of Motion³⁶ indicating that the GoC does not oppose the confidentiality order if the Board is satisfied that the information should be kept confidential in accordance with the NIRB's Rules of Procedure. However, the GoC notes that the GoC has not requested to be provided with a copy of the Economic Summary to be kept in confidence, but preserves the right to do so if such information would be useful to the GoC in its review of the Phase 2 Development Project.

In addition to the receipt of the GoC written submission, during the Hearing on November 3, 2019 the Board invited the Proponent and Intervenor to provide the Board with their views regarding the motion.³⁷

Baffinland clarified during the Hearing the implications for Intervenor if the Board granted the requested for confidentiality:

*We're asking for confidentiality. That means it's not posted on the registry and generally available to the public. I note that the rules -- it's Rule 13.4 -- provides that where documents are confidential, they may be reviewed by parties on undertakings. And we would want to be very careful about the terms of those undertakings.*³⁸

³⁵ Notice of Motion and attachment in support of Baffinland Iron Mines Corporation dated October 28, 2019, circulated by the NIRB on October 29, 2019 (NIRB document ID No. 327333)

³⁶ Government of Canada written comments to Oceans North and Baffinland Iron Mines Corporation Notices of Motion dated October 31, 2019, circulated by the Board on November 1, 2019 (NIRB document ID No. 327375).

³⁷ The full transcript of the discussion of the Baffinland Motion at the Hearing is found in the NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at pp. 169-184.

³⁸ B. Armstrong, Baffinland Iron Mines Corporation, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 169, lines 14-20.



Legal counsel for the NIRB clarified how confidential documents may be considered by the Board and parties, as follows:

there are provisions in the NIRB's Rules of Procedure that would allow for information that is considered to be confidential to be provided to other participants in the public hearing venue, subject to confidentiality requirements, so signing undertakings, also providing nondisclosure agreements or -- or other further reassurances of maintaining confidentiality within the group of participants who would be able to access that information.

And as -- as legal counsel for Baffinland also noted, as part of that order, the Board could also -- would -- would also indicate that the documentation would not be available on the normal process which would be posted on the public registry and/or, if it was entered as an exhibit in these proceedings, again, there would be a notification only on the registry that that information has been maintained in confidence and is subject only to disclosure under an undertaking.³⁹

In response, to Baffinland's Motion, an Elder from Iqaluit, indicated: "*Sometimes perhaps some information may not be relevant, but we have to hear all types of evidence.*"⁴⁰

During the Hearing, the Government of Canada indicated their position was as stated in the written submission. The Qikiqtani Inuit Association took no position on the confidentiality request of Baffinland, but did request "*the right to be able to review a copy of Baffinland's proposed economic summary as a directly impacted party with an interest in reviewing relevant economic information that affects Qikiqtani Inuit, and that would also validate Baffinland's previous public statements regarding financial viability.*"⁴¹

Nunavut Tunngavik Incorporated did not take a position with respect to the Baffinland Motion, but stated:

... Nunavut Tunngavik Incorporated advocates for transparency in all co-management affairs. It is also most beneficial for the Nunavut Impact Review Board to have access to all relevant information to take into account and consideration when making their decisions in the most comprehensive way.⁴²

Mittimatalik Hunters and Trappers Organization (MHTO) indicated that they would welcome the submission of further information that provides clarity around Baffinland's intentions and the financial viability of the Proposal, but noted: "*We do not believe or agree that the financial summary document, if*

³⁹ T. Meadows, Nunavut Impact Review Board, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 172, lines 6-23.

⁴⁰ Mr. Kakee, Iqaluit, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 174, lines 7-9.

⁴¹ J. Ottenhof, Qikiqtani Inuit Association, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at pp. 174-175, lines 26 and 1-5.

⁴² M. Belleau, Nunavut Tunngavik Incorporated, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at pp. 176-177, lines 26 and 1-6.



*providing justification for project development, should be treated confidentially by NIRB...*⁴³ The MHTO also advised that because the MHTO does not have legal representation, any legal instrument/legal requirement for an undertaking may warrant special consideration to allow for the MHTO's participation in the review of information bound by such an undertaking.

The Hamlet of Pond Inlet, while supportive of Baffinland submitting the Economic Summary, indicated that this support was conditioned on the Board undertaking a critical evaluation of the information by a credible third party who can evaluate the accuracy and reliability of the information submitted. The Igloolik Working Group echoed the position of the MHTO, including the observation that the Igloolik Working Group is also not represented by legal counsel. The Hall Beach Hunters and Trappers Organization support the Baffinland Motion to provide the Economic Summary, but requested that there be transparency in terms of the information provided.

The Government of Nunavut took no position on Baffinland's Motion.

Oceans North expressed reservations about the secrecy of the process if the Motion were granted and expressed the view that transparency, public participation and public review is warranted in light of inconsistencies in Baffinland's FEIS Addendum and communications with investors, as expressed in the Oceans North Motion. On this basis, Oceans North asked Baffinland four questions regarding the information contained in the Economic Summary, which Baffinland deferred responses to (see Questions 1-4 in [Appendix B](#)).

The World Wildlife Fund supported the filing of additional financial information from Baffinland, but disagreed that this information should be kept confidential by the Board, noting: "*It is in the public interest to have an open and transparent discussion to weigh the costs and benefits of the Phase 2 project.*"⁴⁴

Nunavut Independent Television deferred to the Board in respect of the question, but with the proviso that all parties should have access to the information through a confidentiality undertaking.

3.3.2 Disposition by the Board

With respect to the Baffinland's request to provide the Board with the described Economic Summary document in confidence, the Board recognizes that as a privately-held company Baffinland is not required to provide this type of financial information in a public forum, and the Board also recognizes that there is potential for Baffinland's financial and commercial interests to be harmed by the public release of this type of information. However, the Board also heard from intervenors that there is great concern and some mistrust regarding the underlying economics that Baffinland has indicated support both the need for the

⁴³ A. Hanson-Main, Mittimatalik Hunters and Trappers Organization, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 178, lines 3-6.

⁴⁴ A. Dumbrille, World Wildlife Fund, , NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 183, lines 9-11.



Proposal and also the preferred means of carrying out the Proposal in terms of project shipping (via a Northern Railway line and an extended marine shipping season).

At the Hearing, the Board indicated that until all information from the technical sessions, including Baffinland's socio-economic presentation and questioning has been completed, it is difficult for the Board to assess the need for, and relevance of, Baffinland's Economic Summary. Consequently, the Board deferred providing a disposition of Baffinland's Motion until after Baffinland has provided a response to four deferred questions from Oceans North in respect of the Economic Summary and all of Baffinland's presentations and questioning at the technical sessions component of the Hearing have concluded.

The Board acknowledges that if Baffinland's request to submit the Economic Summary in confidence is ultimately granted, the Board will likely invite additional submissions from the parties, regarding the confidentiality protections and terms under which the Board can allow interested parties to review and comment on the information provided in the Economic Summary.

3.4 Request by Mittimatalik Hunters and Trappers Organization to Amend the Community Roundtable Agenda in Pond Inlet

On September 17, 2019 Board staff received an inquiry from the Mittimatalik Hunters and Trappers Organization (MHTO) regarding the potential to amend the Agendas for the Community Roundtable sessions in the Hearing to allow time for Intervenor to present to the community on the substance of their interventions.⁴⁵ Given time limitations, the Board did not revise the Agendas as requested. Subsequently, on November 1, 2019, the Board received a Notice of Motion from the MHTO to:

- Amend the Final Hearing Agenda (issued October 10, 2019) to add time for presentations by Intervenor to Community Roundtable participants during proceedings at the Cadet Hall in Iqaluit, NU on November 5 and 6, 2019, and
- at the Community Hall in Pond Inlet, NU on November 8 and 9, 2019.⁴⁶

As an alternative to including presentations by Intervenor during the Community Roundtable sessions, the MHTO requested the removal of Baffinland's scheduled presentations during the Community Roundtable.

3.4.1 Views of the Parties

Attached to the MHTO's Motion was the October 2, 2019 correspondence from Oceans North on the Draft Community Roundtable Agendas indicating Oceans North's support for adding time to the first part of the Community Roundtable Agendas to add time for Intervenor to make presentations regarding their

⁴⁵ Community Roundtable email to NIRB regarding Agenda, various dates, circulated by the Board on November 1, 2019 (NIRB document ID No: 327383).

⁴⁶ Mittimatalik Hunters and Trappers Organization (MHTO) Notice of Motion, dated November 1, 2019, circulated by the Board on November 1, 2019 (NIRB document ID No. 327367).



The Qikiqtani Inuit Association supported the MHTO Motion, noting: *“It is important that the Mittimatalingmiut are able to weigh information not just from Baffinland, but also the Inuit organizations and other intervenors who have participated fully in this review process.”*⁵¹ Nunavut Tunngavik Incorporated also supported the MHTO’s Motion, noting the importance of Inuit having the right to be adequately informed and the opportunity to participate fully and fairly in the process. The Hamlet of Pond Inlet and the Igloolik Working Group supported the Motion of the MHTO.

The Government of Nunavut had no objections to the MHTO Motion, noting: *“we believe in the rights of the parties to be heard in procedural matters, and we would, thus, support other parties, inclusive of the proponent, having an opportunity to reply as parties may deem appropriate.”*⁵² The Government of Canada also indicated that the GoC had no objections to the motion.

As indicated in their correspondence of October 2, 2019, Oceans North supported the MHTO’s motion, but noted that: *“...it remains our position that additional time within the schedule afforded to intervenors is not sufficient to address many of the issues that have arisen”*⁵³

The World Wildlife Fund supported the MHTO Motion stating:

*Allowing Baffinland the opportunity to directly address the community roundtables, but not providing the same opportunity to intervenors, will result in one-sided information from Baffinland being the only perspective presented and will lead to an uninformed discussion and equally uninformed and even misinformed eventual decision by the NIRB Board,*⁵⁴

Nunavut Independent Television Network (NITN) advised that there had been intermittent outages of the internet (and therefore access to the streaming of the Hearing by community members in Pond Inlet) during the broadcast, so NITN was aware of the limitations on streaming the proceedings. NITN also indicated support for the MHTO Motion *“on the basis that community members should benefit from having the perspectives of all parties and intervenors who wish to express themselves, while at the same time ensuring that there's sufficient time for community members to give their own perspectives and to ask questions.”*⁵⁵

Baffinland took no position with respect to the Motion of the MHTO, leaving to the Board the determination of how the Community Roundtable sessions should be conducted.

⁵¹ J. Ottenhof, Qikiqtani Inuit Association, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 191, lines 12-15.

⁵² N. O’Grady, Government of Nunavut, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 194, lines 23-26.

⁵³ C. Debicki, Oceans North, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, at p. 195, lines 22-25.

⁵⁴ A. Dumbrille, World Wildlife Fund, Nunavut Impact Review Board, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, pp. 196-197, lines 20-26 and 1.

⁵⁵ L. Lipsett, Nunavut Independent Television Network, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 1, November 2, 2019, p. 197, lines 12-18.



municipal governments in the five North Baffin communities most directly affected by the Proposal to meet, as a collective to discuss the Proposal and the potential for economic benefits and project-effects.⁵⁷ In support of the motion, the Igloolik Working Group noted that although the communities had hoped to receive funding to support this meeting prior to the Hearing, CIRNAC had indicated that the funding requested had been approved during the Hearing. The Igloolik Working Group indicated that the outcome of the meeting would further inform the interventions of communities before the Board and that a summary of any such outcome would be provided to the Board following the meeting.

3.5.1 Views of the Parties

The Board invited parties to provide a response to the Motion by the Igloolik Working Group to keep the Public Hearing Record Open during the Hearing on November 5, 2019.⁵⁸ The Qikiqtani Inuit Association (QIA) supported the Motion of the Igloolik Working Group, stating:

Allowing the record to remain open would allow the communities to have an opportunity to come together to ensure that they can review what they have heard, confirm for themselves that they understand the impacts of the project, and provide any necessary supplemental submission to the Board to help inform your decisions, based on what their assessment, as well, of the impacts of the project is.⁵⁹

The QIA also indicated that if the Board did grant the Motion, that once the communities had an opportunity to provide an additional submission to the Board to reflect the outcome of their meetings, that all other parties to the process should be given short period (72 hours was suggested) to file a supplemental final written argument if they chose to do so. Nunavut Tunngavik Incorporated echoed their support for the Motion on the same basis as the QIA, and asked for parties to have an opportunity to file supplemental written submissions within 72 hours of the community submission being filed.

The Mittimatalik Hunters and Trappers Organization (MHTO) supported the Motion of the Igloolik Working Group but noted that it may be difficult to organize the meeting of the communities within two weeks of the close of the Hearing. The MHTO also expressed concern that the volume of materials that parties should be permitted to file in their supplemental submissions should be limited, as there are limited resources for parties, such as the MHTO, to review lengthy submissions.

The Hamlet of Pond Inlet indicated support for the Motion but inquired regarding what the implications of keeping the Public Hearing Record open would be for the Board's 45 day decision-making timeline. The

⁵⁷ M. Recinos, Igloolik Working Group, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 3, November 4, 2019, at pp. 642-644.

⁵⁸ The discussion of the Igloolik Working Group Motion can be found in the NIRB Public Hearing File No. 08MN053 Transcript, Vol. 4, November 5, 2019, at pp. 670-680.

⁵⁹ L. Land, Qikiqtani Inuit Association, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 4, November 5, 2019, at p. 673, lines 10-18.



Board's legal counsel clarified that the Board's decision-making timeline does not commence until the Public Hearing Record for the file is closed. The Hall Beach HTO supported the Motion.

The Government of Nunavut supported the Motion and the request of parties to be given time to make a reply to any submissions filed. The Government of Canada expressed no objection to the Motion.

Oceans North, the World Wildlife Fund and Nunavut Independent Television Network also supported the Motion brought by the Igloolik Working Group.

Baffinland supported the Motion stating:

Baffinland supports the Igloolik Working Group's motion to keep the record open until December 16th, 2019, for the limited purpose of permitting the communities to report back to the Board on the outcome of the workshop that is planned for late November. Baffinland is not objecting to intervenors filing limited submissions on the reports from the workshops by December 19th, 2019.⁶⁰

Baffinland also noted, that because the Board's standard practice is for the Proponent to be given the final opportunity to respond to all written submissions, Baffinland should have the opportunity to respond to the submissions filed by the communities and parties by Baffinland filing a final reply submission on December 23, 2019. Baffinland also clarified that, in their view, for all other purposes, the Public Hearing Record should be closed at the end of the Community Roundtable on November 10, 2019, so that no additional submissions can be provided to the Board other than the submissions under the scope of the Igloolik Working Group's Motion.

3.5.2 Disposition by the Board

In the afternoon session of November 5, the Board provided the following guidance regarding the Motion brought by the Igloolik Working Group:

Recognizing that the funding required to conduct this important workshop was only just awarded and noting the support for the motion by all participants here, the Board has granted the motion to keep the public hearing record open. The Board has adopted the timelines proposed by Baffinland as follows:

- the five Baffin communities participating in the November workshop will have until December 16 to provide additional written materials they wish to file with the Board in relation to the workshop;

⁶⁰ C. Kowbel, Baffinland Iron Mines Corporation, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 4, November 5, 2019, at p. 680, lines 13-20.

- the registered intervenors will have until December 19 to provide their written responses to any materials filed by the communities on December 16, if desired; and
- Baffinland will have until December 22 [sic December 23] to file a final response to the materials filed by other parties in accordance with this motion.⁶¹

NOTE: As subsequently the Board heard the oral motion of Nunavut Tunngavik Incorporated to suspend the Hearing, the timelines set out in the Board’s November 5, 2019 ruling have been modified, and the parties are directed to follow the revised timelines set out by the Board in [Table 1: Immediate Next Steps in the Continuation of the Board’s Assessment of the Proposal](#) of this Report.

3.6 Oral Motion by Nunavut Tunngavik Incorporated

On November 6, 2019 Nunavut Tunngavik Incorporated (NTI) brought forward an oral motion to suspend the Public Hearing for the Proposal for 9-12 months, noting that the following justified the suspension of proceedings:

- NTI acknowledged that there was a previous motion brought by the Igloodlik Working Group to delay the close of the Public Hearing by 4-6 weeks to allow time for additional community consultations to take place with the expectation that the outcome of these consultations would further inform the interventions of communities before the Board. NTI also acknowledged that the Board had decided that the in-person Public Hearing would need to be continued with additional in-person proceedings to be scheduled following the submission of the reporting from the communities regarding outcome of their meeting; however, NTI indicated that the suspension of the Hearing for 2-4 months would be insufficient time for Inuit to be adequately engaged and to develop a full understanding of the Proposal.
- NTI noted that the delayed completion of the Hearing agenda resulted in incomplete discussions of technical issues which limited the ability of community representatives to understand the Proposal and fully participate in discussions of the Proposal, potential impacts and regulation of activities.
- NTI highlighted that with the number of documents to review, the lack of translated materials, and the number of unresolved issues going into the Public Hearing the Board should grant additional time for Inuit to review, discuss, consult and conclude their thoughts on the Proposal before the Public Hearing should continue.
- NTI concluded that although they might ultimately support the Mary River Project as modified by the Proposal, if the Proponent wishes to conduct activities on Inuit

⁶¹ K. Kaluraq, Acting Chairperson, Nunavut Impact Review Board, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 4, November 5, 2019, at p. 738, lines 7-25.



Owned Land then Inuit need to be a part of the process and have meaningful input into project development.⁶²

At the Hearing, registered Interveners expressed unanimous support for NTI's Motion.⁶³ Although Baffinland noted that they would be prejudiced by this unexpected delay in the process, Baffinland requested that the Board defer outlining a revised timeline until Baffinland had the opportunity to provide submissions.⁶⁴

Following a short period of deliberation on November 6, 2019, the Board adjourned the Public Hearing and cancelled the Community Roundtable session in Pond Inlet scheduled for November 8-9, 2019. The Board further requested that parties provide their views with respect to the required length of the suspension of the Public Hearing. Interveners were required to provide a written response to NTI's Motion on or before November 15, 2019 and Baffinland was required to file a response by November 22, 2019 (which was later extended to November 29, 2019 to allow Baffinland time to conduct additional engagement with community representatives).

3.6.1 Views of the Parties

On or before November 15, 2019 the NIRB received written responses from the following Interveners and interested parties:

- Nunavut Tunngavik Incorporation (doc ID no.: 327469);
- Qikiqtani Inuit Association (doc ID no.: 327476);
- Hamlet of Pond Inlet (doc ID no.: 327449 to 327452);
- Mittimatalik Hunters and Trappers Organization (doc ID no.: 327448);
- Igloolik Working Group (doc ID no.: 327466);
- Igloolik Hunters and Trappers Association (doc ID no.: 327492);
- Hamlet of Arctic Bay (doc ID no.: 327491);
- Government of Nunavut (doc ID no.: 327469);
- Government of Canada (doc ID no.: 327475);
- Ocean's North (doc ID no.: 327490);
- Nunavut Independent Television Network (doc ID no.: 327467); and
- World Wildlife Fund (doc ID no.: 327463).

⁶² See the statement of A. Kotierk, President, Nunavut Tunngavik Incorporated, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 5, November 6, 2019, at pp. 1019-1023.

⁶³ The oral submissions of the Interveners can be found in NIRB Public Hearing File No. 08MN053 Transcript, Vol. 5, November 6, 2019, at pp. 1024-1038.

⁶⁴ B. Armstrong and M. Lord-Hoyle, Baffinland, NIRB Public Hearing File No. 08MN053 Transcript, Vol. 5, November 6, 2019, at pp. 1038-1041



On or before November 29, 2019, Baffinland provided their written submission in response to NTI's Motion (doc ID no.: 327616.)

[Table 5](#) that follows represents a brief *summary* of the comments received in respect of NTI's motion, including the basis for the adjournment as well as the length of time being suggested; please note that the original comment submissions are accessible online from the NIRB's public registry: www.nirb.ca/project/123910.

Table 5: Summary of Parties' Submissions to the Board in Respect of the Motion

Party	Time	Justification	Additional Comments
Intervenors			
Nunavut Tunngavik Inc.	9-12 Months	<ul style="list-style-type: none"> Noted the serious concerns of Inuit and the dissatisfaction with the Proponent's current proposal including a lack of mitigation measures for significant impacts. To allow Baffinland to provide satisfactory and fulsome supplementary evidence, reports, and plans, including a framework to address Inuit Qaujimajatuqangit. To allow for all relevant documents to be translated into Inuktitut. To allow for the most affected communities to meet, deliberate on the issues, fully review materials and prepare their views. 	NTI does not oppose in principle the potential mine expansion but is very concerned that it must be done in a manner, which properly respects the balance between the benefits of such development and the potential environmental, social and cultural impacts.
Qikiqtani Inuit Association	12 Months	<ul style="list-style-type: none"> Noted the need to repeat some previous process steps with a more focused scope, including: Baffinland to provide updated technical information, submission of information 	A wide scope of technical aspects of the project remain uncertain, and as a result many technical issues remain unresolved.



Party	Time	Justification	Additional Comments
		<p>requests by parties, responses by the Proponent, scheduling of technical meeting and a pre-hearing conference prior to determining whether to resume a public hearing</p> <ul style="list-style-type: none"> ▪ To ensure Baffinland can provide key technical materials and information in Inuktitut. ▪ To allow Baffinland to adequately address concerns with respect to proper integration of Inuit Qaujimajatuqangit and Inuit perspectives into the project. ▪ Improve Inuit participation in the assessment process through provision of adequate participant funding. 	
Hamlet of Pond Inlet – 2 options provided	5-6 Months (based on on-the-land activities)	<ul style="list-style-type: none"> ▪ To allow time for the Hamlet to consider documents that were submitted immediately prior to the Hearing. ▪ To allow time for the most affected communities to come together in Igloolik in order to share their concerns with respect to the Phase 2 Proposal. ▪ To allow time to submit the results of these discussions to the NIRB. Results of the meeting would be provided as a reference document for the affected communities and as a submission to the NIRB. 	Recommend public hearing be held within the first 2 weeks of April, before the community is out actively using sea ice for travel
	12 Months	<ul style="list-style-type: none"> ▪ To allow community members to have adequate time to become 	



Party	Time	Justification	Additional Comments
		<p>familiar with what is being proposed, and to discuss it;</p> <ul style="list-style-type: none"> ▪ Noting that Baffinland's research is incomplete and requires further study to address potential impacts of increased shipping on marine mammals; and ▪ To allow time for many important documents and evidence to be translated, noting that a lack of translated material causes difficulties for the Hamlet to review the material. 	
Mittimatalik Hunters and Trappers Organization	12 Months	Allow time to fully assess the proposal and apply for (and be granted) participant funding to continue the review, as well as to allow time for the communities to come together and discuss the Proposal.	Recommended that Baffinland ensure communities are participating and providing meaningful input to project development and assessment
Igloolik Working Group	9 months	<ul style="list-style-type: none"> ▪ To allow sufficient time to address unresolved issues and request more funding and resources, especially for the five impacted communities, to discuss potential impacts and mitigation associated with the Proposal. 	Would support the Production Increase Proposal's 6 mt/a ore output throughout the remainder of the assessment of the Phase 2 Proposal IF no Inuit employees are laid off <u>and</u> Baffinland continues to work closely with the community to improve consultation.



Party	Time	Justification	Additional Comments
Government of Nunavut	None given	<ul style="list-style-type: none"> Recommend the NIRB expedite the reconsideration process to prevent negative economic effects from layoffs and that the Board schedule a second Public Hearing at the first available dates, unless Intervenors have justified a greater delay. 	Request a pre-Hearing teleconference be scheduled 45 days prior to reconvening the Public Hearing and request that the Board allow Intervenors to amend their previously filed final written submissions prior to the continuation of the Public Hearing.
Government of Canada	None given	<ul style="list-style-type: none"> Regardless of the length of the adjournment, the period of adjournment should be used by the parties to resolve or clarify issues 	The Government of Canada supported additional discussion on the renewal of the Production Increase Proposal's 6 mt/a ore output.
Oceans North	None given	<ul style="list-style-type: none"> Allow for the completion and dissemination of relevant information as well as clarification of the project scope. 	
World Wildlife Fund	12 months	<ul style="list-style-type: none"> To allow clarification of scope of the project as well as finalizing the preferred railway routing, with justification for selection and including mitigation measures to address potential impacts on caribou. To allow Proponent to address community concerns regarding Inuit Qaujimajatuqangit. 	Request additional technical meetings be held either during adjournment or as part of the continued Public Hearing.
NITV	Unspecified	<ul style="list-style-type: none"> Supports a longer adjournment to help improve dialogue between the Proponent and parties on some of the critical issues related to impact significance and integration of Inuit Qaujimajatuqangit into the impact assessment and 	<p>Recommended the need for additional participant</p> <p>funding to support informed and constructive discussion when the public hearings resume</p>



Party	Time	Justification	Additional Comments
		<p>mitigation strategies for the Phase 2 Proposal.</p> <ul style="list-style-type: none"> The period will also allow time to translate the key information and documentation about the Phase 2 Proposal into Inuktitut. 	
Proponent			
Baffinland	5.5 Months	<ul style="list-style-type: none"> To allow Baffinland to address concerns raised by parties and consider additional steps requested for consultation or updating of final written submissions. Baffinland would provide additional info by December 30, Intervenor would provide an update to their final written submissions by January 31 and Baffinland would respond by February 17 Requested the NIRB to hold a week of technical meetings in late February or early March Recommended a 2 week in-person public hearing in mid-April 2020, with the NIRB report to be issued to the Minister by end of June 2020. 	<p>A failure to schedule public hearings commencing in mid-April 2020 (and completing in time for NIRB to issue its report and recommendation to the Minister at the end of June 2020) will challenge Baffinland's ability to engage with potential investors and may result in lost financing opportunities for the project.</p> <p>Baffinland will be seeking an extension to the 6 mtpa production increase due to expire on December 31, 2019 in a separate application.</p>



Party	Time	Justification	Additional Comments
Other Parties Participating through Appointed Community Representatives			
Igloolik Hunters and Trappers Association	None given	Supports the adjournment and delay of the Public Hearing to allow time for the most affected communities to meet and discuss the proposal.	Baffinland should address the concerns of Pond Inlet regarding the railway alignment and the potential project effects on Narwhal and Beluga as well as incorporate the concerns of the most affected communities into the project proposal.
Hamlet of Arctic Bay	4 Months	Provided motion that NIRB resume the Public Hearing before 14 February 2020.	

3.6.2 Disposition by the Board

Unfortunately, due to a number of circumstances that occurred in the lead up to the Public Hearing and during the Public Hearing, including a significant number of outstanding submissions and a lack of time to translate and review large volumes of information, the Board was unable to ensure the planned Agenda was successfully completed during the in-person Public Hearing conducted November 2-6, 2019 (the Hearing). Throughout the Board's consideration of the Proposal, the Board has heard that there are significant concerns regarding the impact assessment methodology employed by Baffinland, the use of Inuit Qaujimajatuqangit and limits on the public engagement undertaken by the Proponent to support the Proposal. Parties also expressed that there is a lack of trust between some parties and the Proponent, which appeared to complicate discussions of the technical issues associated with the Proposal during the Hearing.

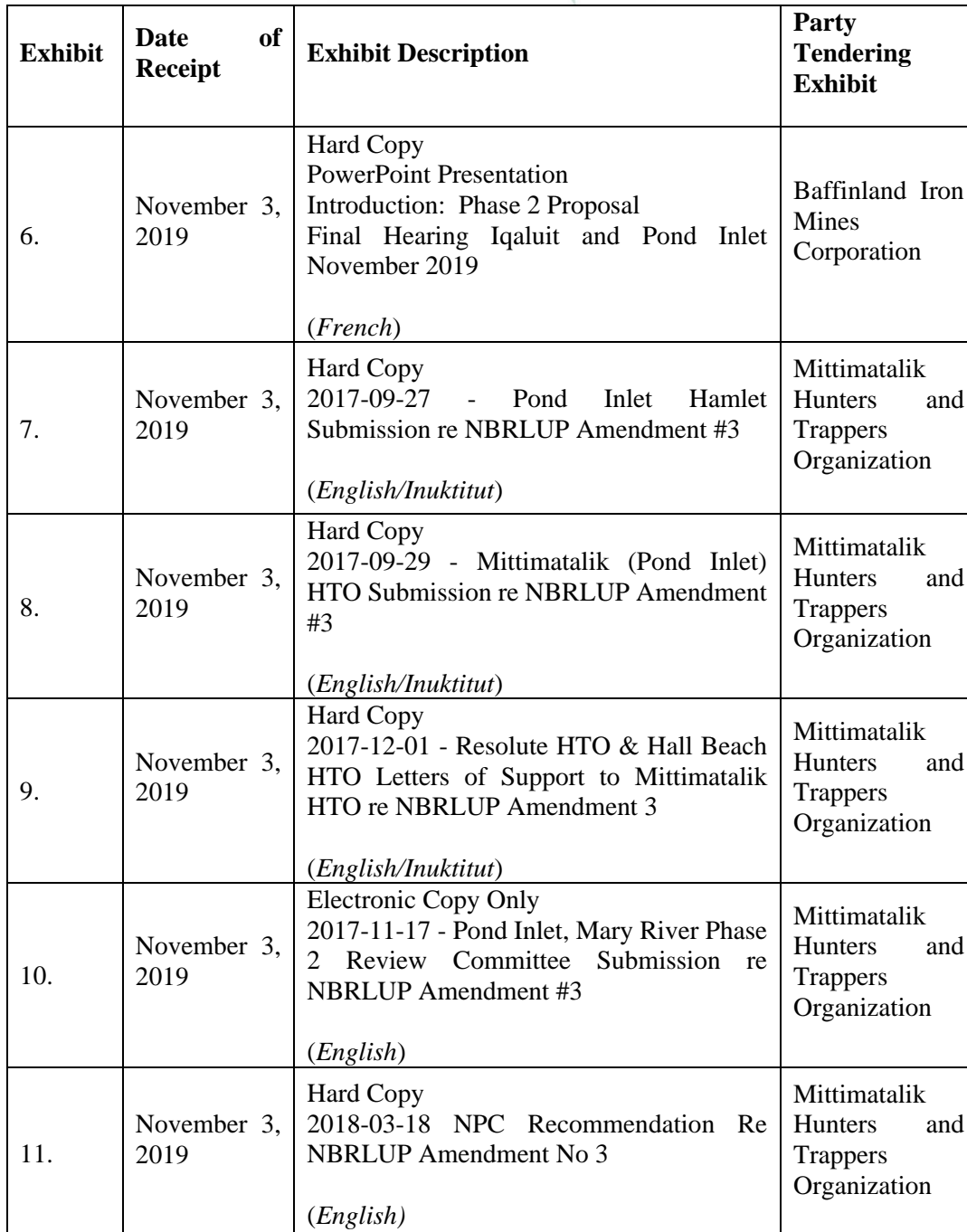
Further, although there were differences amongst the parties regarding the length of the adjournment and additional steps in the process required to conclude the Hearing associated with the Board's assessment of the Proposal, there is general consensus amongst all parties that further discussions are required to resolve technical issues associated with the Proposal, with the Proponent and parties generally aligned in identifying the need for additional technical meetings to be scheduled to narrow the outstanding issues to be addressed prior to the continuation of Public Hearing proceedings.

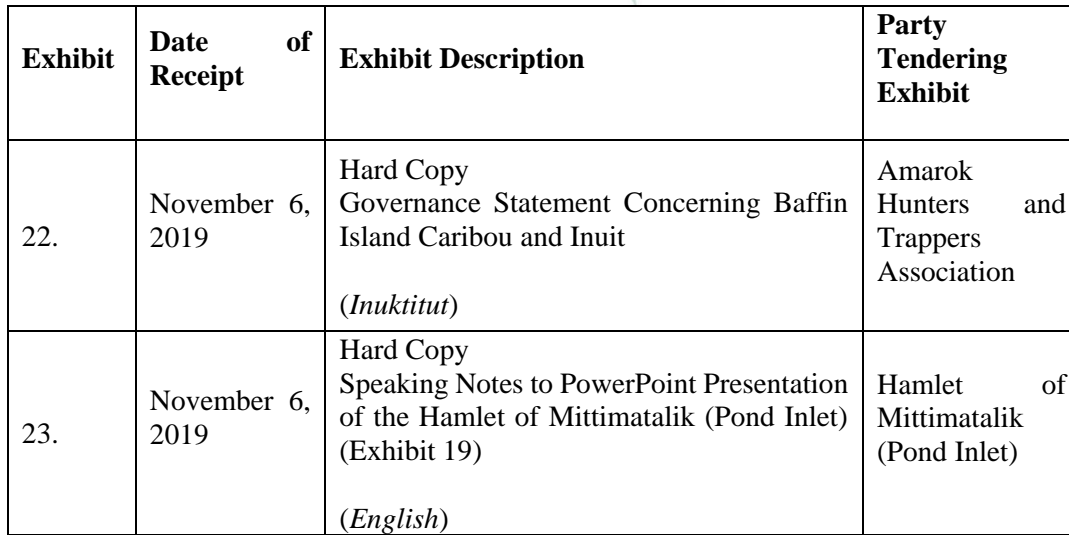
In determining the appropriate next steps for this assessment, the Board's central objective is to ensure the Proponent and parties are able to participate fully in the Board's processes and can provide the Board with the evidence, comments and questions necessary to:

- address all the technical issues associated with the Proposal;



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Appendix B: Questions Deferred During the Public Hearing

[Table 6](#) that follows provides a listing of questions asked during the Hearing for which the response was deferred in whole or in part. This listing is being provided for the convenience of the parties only and is based on the listing kept by the NIRB during the Hearing. Although the Board has made every effort to keep an accurate and complete listing, parties may have identified additional questions that, in their view, remain outstanding. The Board encourages any party awaiting a deferred response to follow up directly with the party providing a response to ensure that all deferred questions are identified and responses to deferred questions are provided to the appropriate parties as the Board's assessment continues. **Error! Reference source not found.**

Table 6: Summary Listing of Questions with Outstanding Deferred Responses

#	Date	Party Requesting/ Party Answering	Question	Answer Received	Comments
1.	Nov. 2	Oceans North to Baffinland	To what extent would the 11 page Economic Summary (Baffinland proposes to file in confidence) be compliant with the securities regulations that Baffinland is bound by? (E.g. would it be compliant with National Instrument 43-101?)		
2.	Nov. 2	Oceans North to Baffinland	To what extent is Baffinland's proposed spending on the expansion provided in the Economic Summary?		
3.	Nov. 2	Oceans North to Baffinland	How does the Economic Summary differ from the Preliminary Offering Circular document?		
4.	Nov. 2	Oceans North to Baffinland	What kinds of additional information that hasn't been provided yet to date is provided in the Economic Summary that		



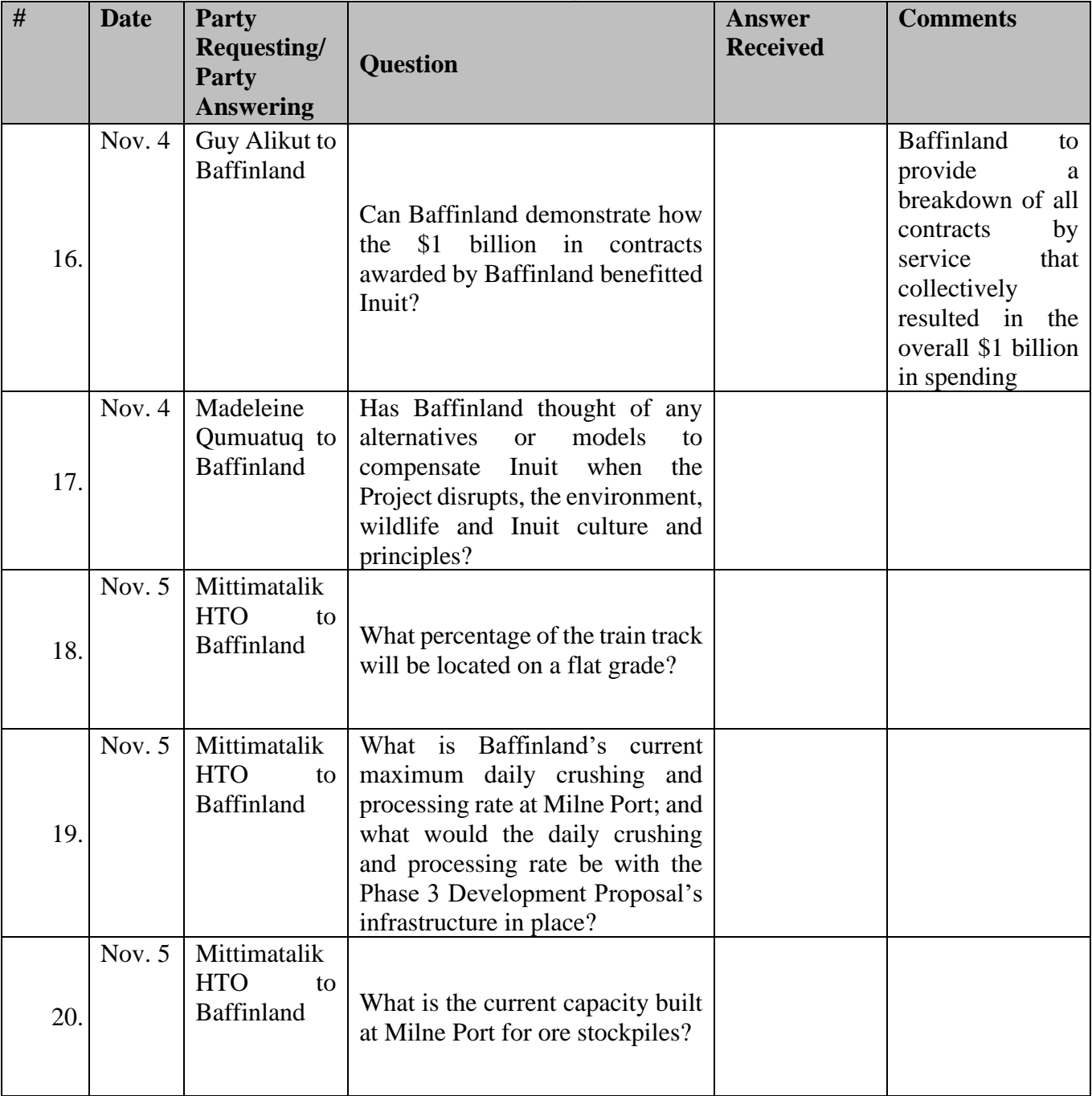
#	Date	Party Requesting/ Party Answering	Question	Answer Received	Comments
			addresses the viability of the project?		
5.	Nov. 3	WWF to Baffinland	Ask that Baffinland clarify what the numbers are expected to be for all transits (i.e. ship traffic) that will occur under the Phase 2 Development Proposal scenario; specifically taking into account: tug activity; resupply vessels, the ore carriers, and fuel tankers altogether (not just the numbers of transits for ore carriers)	On November 4, Baffinland provided a partial response, indicating that the information of the number of vessels for each type of carrier, tugs, and resupply vessels were provided in an overview of marine operations summary provided to the NIRB in December 2018	Deferred to Marine Overview Presentations
6.	Nov. 3	Nunavut Impact Review Board staff to Baffinland	Request that Baffinland commit to file any market analysis they have relied on to assess the availability of ships that would meet Polar Code requirements?		On November 4, World Wildlife Fund requested clarification of Baffinland's commitment to provide the analysis as well



#	Date	Party Requesting/ Party Answering	Question	Answer Received	Comments
7.	Nov. 3	Qikiqtani Inuit Association to Baffinland	Could Baffinland clarify if operational flexibility requires larger trains with more cars on them under the 20-trip cap, and what would this mean in terms of a portion of time a train would likely be visible to or within the hearing of Inuit travelling through or harvesting within the area where the rail line is visible.	Baffinland provided partial answer on November 3	Deferred addressing the question of the potential noise effects associated with adding additional rail cars
8.	Nov. 4	Mittimatalik HTO to Baffinland	Request Baffinland provide a break down regarding the letters of support for the Phase 2 Development Project provided to Baffinland by employees by location of residence...i.e. how many people from Nunavut communities are in support?		
9.	Nov. 4	Igloolik Hamlet to Baffinland	Have you vetted the Iqaluit translation for the word “deviation” (in the context of the railway alignment) because the translation suggests not a change to the route, but the postponement or delay of the development of the route?		Baffinland to discuss outside the Hearing to understand the difference in the translation and to report back to the Board and parties if necessary
10.	Nov. 4	Igloolik Hamlet to Baffinland	Baffinland continues to indicate that the Business capacity start up fund is a benefit of the Project, but the current model does not appear to be working to benefit small, local businesses; how can this be fixed?		Deferred to Socio-Economic Session



#	Date	Party Requesting/ Party Answering	Question	Answer Received	Comments
11.	Nov. 4	Igloolik Hamlet to Baffinland and Government of Nunavut	Solutions need to be found to Nunavut Housing Corp.'s practice of increasing rent to reflect the salaries of employees at the mine		Deferred to Socio-Economic Session
12.	Nov. 4	Natural Resources Canada to Baffinland	What steps will Baffinland be taking to establish baseline conditions in terms of slope stability and permafrost conditions when conducting their rail line routing geotechnical investigations?		Written response to be provided by Baffinland's rail engineer
13.	Nov. 4	Natural Resources Canada to Baffinland	Will the selection of the Route 3 alignment of the railway affect the commitments made by Baffinland in response to Intervenor's comments; and will it affect the likelihood of following the recommendations in the Hatch Report (Geotechnical Recommendations for the Northern Railway)?		The areas associated with the Route 3 alignment will need to be updated
14.	Nov. 4	Oceans North to Baffinland	Can Baffinland provide the fact sheet/Presentation Materials provided to employees in advance of them filling out the letters in support?		Baffinland to supply the fact sheet and presentation materials as an Exhibit (or to the NIRB)
15.	Nov. 4	World Wildlife Fund to Baffinland	Will Baffinland consider not building the railway at all?		Deferred to presentation on Alternatives Assessment but not subsequently answered directly



#	Date	Party Requesting/ Party Answering	Question	Answer Received	Comments
21.	Nov. 5	Madeleine Qumuatug to Qikiqtani Inuit Association and Government of Nunavut	How are QIA and the GN contemplating on working on social issues to support healing in the communities? How have QIA and the GN prepared to work with people experiencing mental health issues and going through hardships with alcohol and other substances. Is there anything that you have in place for the people to rehabilitate in the communities or get help?		
22.	Nov. 6	Government of Nunavut to Baffinland	Could Baffinland consider providing a technical memo/report that provides the difference in the costing for the development of embankments with gentler slopes than the 1:2 slope proposed by Baffinland (e.g. a slope of 1:3 or 1:4)		Baffinland did not commit to providing this information but would discuss this internally within Baffinland.
23.	Nov. 6	Transport Canada to Baffinland	Could Baffinland clarify what is meant by the prohibition on “winter shipping” in the NPC Amendment No. 3?		Baffinland to consult technical supporting documents on the ice study to provide a response.
24.	Nov. 6	World Wildlife Fund to Baffinland	Can Baffinland share with the WWF/Intervenors the application Baffinland sent to Transport Canada regarding “heavy fuel oil” use by shippers		Baffinland will need to confirm internally what can be shared (will not disclose commercially sensitive information and respect any restrictions



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					Transport Canada may place on Baffinland.