

The correspondence received September 10, 2020 requesting comment to the Draft Pre-Hearing Conference and Community Roundtable Agenda was in English only, and to date, no Inuktitut request for comment on the PHC and Community Roundtable Agenda has been received.

We appreciate the NIRB's flexibility in accepting this late submission, and again request that a more appropriate comment period be adopted for future requests to the MHTO and other community Intervenor. We note that as of September 17, 2020, none of the affected community organizations participating as Intervenor had submitted comment on the Draft Agenda for the upcoming PHC and Community Roundtable.

Procedural Fairness Concern

We recognize from review of the Draft Agenda pertinent to the Community Roundtable session, that the NIRB is not providing an opportunity for intervenors to deliver presentations to the community representatives. Baffinland however, is granted an opportunity to deliver 7 presentations, totalling 300 minutes (5 hours) of time to describe its Phase 2 proposal.

This is concerning to the MHTO. Our issues, some of which are shared by other Intervenor, relate in large part, to BIM's failure to adequately address Inuit Qaujimajatuqangit or appropriately incorporate Inuit perspectives into their significance ratings for all VECs and VSECs that are essential to Inuit, to our livelihood and to our culture.

Our very significant technical issues, which are highly relevant to Inuit participants, have not been addressed by Baffinland or other intervenors adequately at this point and remain outstanding. We do not believe it is Baffinland's job to represent our issues in its presentations, nor would we find that an acceptable course of action.

During the Technical Meeting, the Chair suggested that parties defer questions and issues raised by "community participants" at the Technical Meeting and instead raise them during the Community Roundtable session. We respectfully noted that the representatives at the Technical Meeting were not participating as community participants, but as delegates of formal Intervenor to the process. Given Intervenor are not currently provided an opportunity to present to the Community Roundtable representatives, it is unclear if or how we may present these items for consideration by the (separate, and distinct) community delegates.

As was presented in the MHTO Notice of Motion filed during the November 2019 Public Hearing, we are concerned that the NIRB's Community Roundtable Agenda provides only Baffinland, and not Intervenor, with an opportunity to present information to Community Roundtable participants.

We are concerned that allowing Baffinland the opportunity to directly address the community roundtable and residents of Pond Inlet, but not providing the same opportunity to Intervenor, will result in a biased discussion. Without an ability for the MHTO to present and speak directly to our fellow Inuit, attendees at the community roundtable may not fully understand the range and depth of issues the MHTO and other Intervenor are concerned about regarding the Phase 2 development. This may compromise NIRB's ability for its PHC Decision to make informed recommendations in the public interest.

As was stated during the November Hearing in relation to our Notice of Motion "...we have concerns that the current ordering may unfairly benefit Baffinland. Our intervention is centered

on Inuit knowledge and Inuit experience. Without an ability to speak to fellow Inuit, we are not confident that the [NIRB]'s agenda will allow for adequate information to be presented to roundtable representatives, nor for the commentary to come from representatives back to the Hunters and Trappers Organization, to Baffinland, and to all the other intervenors who should receive the same fair treatment throughout this process.”

We therefore reiterate that Intervenor are due the opportunity to present information to Community Roundtable Participants, so that the community participants can question all parties on their interventions and outstanding issues. We also suggest that though a different process step, these measures are no less important or relevant than they were during the November 2019 Hearing. Given the Covid-19 related office closures and limits on our ability to hold meetings with our own community members over the past several months, and considering statements by both Baffinland and the Qlkiqtani Inuit Association during the Technical Meeting indicating challenges consulting with and engaging communities directly owing to these same limitations, we submit that there is a real and pressing need to ensure Community Roundtable Representatives receive the highest level of engagement and information possible at this point, and going forward.

As was highlighted in our Notice of Motion, the Supreme Court of Canada, in *Clyde River v. Petroleum Geo-Services Inc.* and *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, clarify requirements for satisfying a duty of “deep consultation”- that is, the consultation required when an Indigenous group has a strong claim to an Aboriginal or treaty right and where the potential impacts of a proposed project on that right are significant;

We remain convinced that deep consultation recognizes that Inuit of Nunavut have constitutionally protected treaty rights, and the potential impacts of the Phase 2 project on those rights are significant.

Deep consultation provides participation opportunities for affected Indigenous groups, in this case, the opportunity for the MHTO to present its intervention to Community Roundtable representatives and hear questions and comments to the submission, and for Community Roundtable representatives to hear all interventions in a direct and meaningful way, such that they may form comments and questions to the Proponent and Intervenor, and such that they are given the opportunity to hear from Intervenor in consideration of potential impacts the Phase 2 project may have on Inuit treaty rights.

We recognize the purpose of a Community Roundtable at a Pre-Hearing Conference is necessarily different from that of a Community Roundtable held in conjunction with a Public Hearing, however the rules of procedural fairness should not apply any less. Further, we note that the outcomes of a Pre-Hearing Conference, in terms of the NIRB's determination of whether a proposal is sufficiently developed to proceed to a Hearing, and what those issues are that shall be determined at a Hearing, can ultimately have an impact on Inuit treaty rights.

As we have stated previously, the risk of this project and the costs that communities and Inuit would face if the assessment process follows anything other than the highest level of engagement and thoroughness, is too high, and modifications which threaten engagement or thoroughness, are entirely unacceptable.

We note that during the November 2019 Hearing, three parties indicated they took no position or had no objection to the MHTO's Motion, while all other parties indicated support.

Ultimately, the NIRB's disposition of the MHTO's Motion in November 2019 indicated:

“In terms of the community roundtable in Pond Inlet, Baffinland will be able to provide their

overview presentation as scheduled, but the Board has added to the agenda to allow intervenors who wish to address the community of Pond Inlet to provide a ten-minute summary of their intervention.”

The MHTO, for reasons set out above and as provided in our November 2019 Notice of Motion, and considering the Board’s finding in favour on the grounds set out in its December 16, 2019 Record of Proceedings and Disposition of Motions Report, requests that the NIRB amend the agenda for the upcoming community Roundtable session to allow for a minimum of 10 minute presentations to be provided by any Intervenors desiring an opportunity to do so.

Closing

We appreciate the Board’s acceptance of our late submission, and submit with apologies that an earlier delivery was not possible. We look forward to a productive and informative Pre Hearing Conference and Community Roundtable, and appreciate the NIRB staff’s efforts to ensure the process is run smoothly and fairly for all parties.

Please contact Molleen Anaviapik, MHTO Manager, at pond@baffinhcto.ca with any questions or for clarification on our submission.

Sincerely,



Eric Ootoovak
Chairperson
Mittimatalik Hunters and Trappers Organization

cc: Aluki Kotierk, Nunavut Tunngavik Inc.
PJ Akeeagok, Qikiqtani Inuit Association
Joshua Arreak, Mayor of Pond Inlet
Arusa Shafi, Northern Projects Management Office