

NUNAVUT IMPACT REVIEW BOARD

MARY RIVER PHASE 2 PROPOSAL

BAFFINLAND IRON MINES CORPORATION

NIRB File. No. 08MN053

**BAFFINLAND RESPONSE TO THE DECEMBER 17, 2020
MOTIONS OF THE MITTIMATALIK HUNTERS AND TRAPPERS ORGANIZATION
AND THE HAMLET OF CLYDE RIVER**

Summary Response to Motions of MHTO and Clyde River

1. In the Pre-Hearing Conference Decision Report of October 30, 2020 (the “**PHC Decision Report**”), the Nunavut Impact Review Board (the “**Board**”) gave careful consideration to the resumption of the Public Hearing, taking all views into account. The Board determined that it was reasonable to schedule the resumption of the Public Hearing from January 25 to February 6, 2021. In the Executive Summary of the PHC Decision Report, the Board summarized its conclusions and its determination as set out at Appendix A of this response.
2. The Board has given careful consideration to fulfilling its mandate in the context of the challenges presented by the COVID-19 pandemic. Processes adopted by the Board as part of the resumed Public Hearing include an opportunity for in-person participation in Pond Inlet and Iqaluit, supplemented by the effective use of audio and visual technology to provide various means of participation by Parties and community members.
3. Baffinland Iron Mines Corporation (“**Baffinland**”) hereby submits that the motion of the Mittimatalik Hunters and Trappers Organization (the “**MHTO**”) and the motion of the Hamlet of Clyde River (“**Clyde River**”), both of which are dated December 17, 2020 and which seek to have the Public Hearing postponed, should not be granted and the hearing should resume as scheduled from January 25 to February 6, 2021.

4. Baffinland takes no position with respect to the Motion of the MHTO dated December 17, 2020 seeking leave to present at the Community Roundtable portion of the Public Hearing, scheduled February 1 - 6, 2021, so long as this does not create a delay to the completion of the Public Hearing on February 6, 2021.
5. The following sets out Baffinland's response to the Motions to adjourn in further detail.

Procedural History – Extensive Opportunity for Participation in Phase 2 Proposal Review

6. The suggestion that the NIRB's review of the Phase 2 Proposal has been rushed, or that participants have not had adequate time to prepare for the hearing must be looked at objectively. Using an objective standpoint, given the time period that has unfolded as well as the formal and informal steps that have been included as part of the NIRB process, the NIRB's process leading up to the recommencement of the Public Hearing has been reasonable, has not been rushed, and has allowed for participation by Parties and community members.
7. The Phase 2 Proposal has an extensive procedural history, starting with Baffinland's submission of the Phase 2 Proposal to the Nunavut Planning Commission on October 29, 2014.
8. The PHC Decision Report (p. 10-18) documents at least 68 formal procedural steps that have been undertaken by NIRB in the Phase 2 NIRB process. Since the PHC Decision Report was released, the NIRB has carried out additional procedural steps (such as the distribution of the Draft Agenda for comment).
9. Parties have had the opportunity to participate fully in every procedural step of the NIRB process, including in the form of information requests, technical review comments, participation in three Technical Meetings, in Final Written Submissions prior to the Public Hearing which commenced November 2019, through presentations and questions at the November 2019 Public Hearing, through an additional technical comment period in February 2020, again at a Community Roundtable held September 28 to September 30, 2020 and at the Pre-Hearing Conference held October 1, 2020, and various additional opportunities to comment in writing since the NIRB review process began. Parties and

community representatives will have further opportunities to participate during the upcoming recommenced Public Hearing.

10. It is noted that the Board granted full Party status to both the MHTO and Clyde River and both organizations have had the opportunity to participate in the NIRB technical review process as Parties with the support of participant funding as well as in NIRB processes specifically designed to support community participation.
11. The Phase 2 Proposal started the regulatory process over six years ago. Baffinland submitted its Final Environmental Impact Statement Addendum to the Board in October 2018, over two years ago. This has not been a rushed process in comparison with other proceedings before the NIRB, including the original Mary River Project. For comparison, the Draft EIS for the original Mary River Project was filed on January 21, 2011, the Final filed on February 14, 2011 and the public hearing was held from July 16 - 28, 2012, resulting in approximately 1.5 years to complete. As a further example, on June 20, 2013, Baffinland submitted its Addendum to the FEIS for the Early Revenue Phase. The public hearing for that application was held from January 27 - 31, 2014, representing approximately seven months from submission of the application to the close of the hearing.
12. The NIRB has provided for extensive opportunities for Parties and community members to participate in the review of the Phase 2 Proposal, and the procedural record does not support the suggestion that the Phase 2 Proposal review has been rushed or insufficient in comparison to any other NIRB proceeding or by any standard.

NIRB's Adoption of Procedures in the Context of COVID-19

13. On July 7, 2020, the Qikiqtani Inuit Association ("QIA") wrote to the Board to provide an update about progress toward resolving outstanding technical issues, and the negotiation of an "Inuit Certainty Agreement". Based on this progress, the QIA expressed confidence that the Board process is "ready to resume", with hearing dates in Pond Inlet with in-person components to ensure community members have the opportunity to attend.

14. On July 10, 2020, the Minister of Northern Affairs wrote to the Board respecting calls from the QIA and Baffinland to resume the public review process. The Minister wrote:

I am writing to you today regarding the calls from the Qikiqtani Inuit Association and Baffinland Iron Mines Corporation to request resuming the public review process for the Baffinland Phase 2 reconsideration. The Qikiqtani Inuit Association and Baffinland Iron Mines Corporation have reached a significant milestone by successfully negotiating their “Inuit Certainty Agreement” (ICA) on June 16, 2020, which reflects the resolution of many of the Qikiqtani Inuit Association’s technical issues and other related matters to the project moving forward. Given this, and as per section 114 of the Nunavut Planning and Project Assessment Act, I propose that it is appropriate to recommence the formal reconsideration at this time.

As Minister of Northern Affairs, I remain committed to ensuring that resource projects and the processes associated with reviewing these projects respect all partners involved. I recommend that in the Board’s planning of the remaining reconsideration process, the public hearings respect both the conditions set out by Qikiqtani Inuit Association, including hearing dates in Pond Inlet and an in-person component to the remaining schedule, and all conditions set out by Nunavut’s Chief Public Health Officer. I trust that the Board will continue to provide opportunities for all parties, especially community members, to provide input into the process going forward. Doing so will ensure that the remaining process, including the public hearings, can be completed safely, yet in a timely and accessible manner, for all involved.

On July 10, 2020, the Minister of Northern Affairs recommended that the Board recommence its formal reconsideration of the Phase 2 Proposal and ensure that the public hearing be completed safely, and in a timely and accessible manner.

15. On July 29, 2020 the Board issued a process update stating the following regarding the next steps for the Technical Meeting and Pre-Hearing Conference:

The Board notes that although there is a strong desire and comfort in returning to the Board’s pre-pandemic practices, the Board has concluded that modifications and new approaches are necessary because an indefinite suspension of the Board’s usual in-person proceedings to await a return to normal is unacceptable.

16. The Board held a third Technical Meeting from September 14 - 18, 2020, and a Community Round Table and Pre-Hearing Conference from September 28 to October 1, 2020.

17. The Board issued the PHC Decision Report on October 30, 2020 with a determination to resume the Public Hearing on January 25 to February 6, 2021 – with its consideration and determination summarized in the Executive Summary attached at Appendix A. The PHC Decision report also incorporated the recommendations of the QIA and the Minister for hearing dates in Pond Inlet and an in person component for communities (NIRB has provided for in person opportunities in both Iqaluit and Pond Inlet and the Board has facilitated the use of audio and video technology to support remote participation).
18. The Draft Agenda for the Public Hearing was issued on December 7, 2020. The Executive Summary attached at Appendix A provides a detailed consideration of the processes which the Board will follow in the context of the challenges brought by COVID-19, and reflects the Board’s conclusion that:

Although the Board acknowledges that many parties may be comfortable with only resuming the Public Hearing when the COVID-19 pandemic is over and the Board could return fully to our prepandemic processes, this is not a reasonable approach.

19. On December 18, 2020, the Board issued a detailed “Update to Procedural Direction” giving further clarification on processes at the recommenced Public Hearing, including the following:

In the PHC Report, the Board provided justification for reconvening the Public Hearing after a suspension of more than a year. During the Pre-Hearing Conference in October 2020, parties and community organizations advised the Board that they considered it appropriate to reconvene the Public Hearing in January 2021, and the dates chosen by the Board (January 25 to February 6, 2021) reflected the agreement of participants at that time. The Board continues to consult with parties on appropriate accommodations to its process to take into account the impacts of the COVID-19 pandemic on parties. However, court decisions have demonstrated that the indefinite suspension of all decision-making processes until the pandemic is over are not appropriate.

The Board acknowledges that since the PHC took place the communities of Rankin Inlet, Arviat, Whale Cove and Sanikiluaq have been directly affected by COVID-19 infections and the very stringent public health restrictions and response protocols were implemented to prevent further transmission of the virus. However, since December 2, 2020 stringent Territory-wide restrictions put in place in mid-November have been lifted in the North Baffin communities, including in the community of Pond Inlet. While the NIRB is hopeful that the public health measures currently in place will be effective and will prevent the potential for spread of COVID-19 to the North Baffin communities, the Board continues to monitor the situation and will be guided by the directions of the applicable public health authorities should the situation change. The NIRB has modified, and will continue to improve, existing processes and practices to ensure that the resumed Public Hearing is conducted in a manner that ensures the health and safety of all communities and participants in the Board's proceedings. ...

Since the PHC Report was issued, the NIRB has continued to work with the Government of Nunavut's Chief Public Health Officer and technical experts to address parties' concerns about ensuring there is sufficient capacity in the various venues for the Public Hearing to allow for full participation from interested community members and northern organizations. For example, as requested by several parties during the Pre-Hearing Conference, the NIRB has applied for an exemption to the current indoor gathering size limits (50 persons or 50 % of the facility's capacity) to allow for a higher number of participants to gather in a venue if additional safety measures such as full time mask-wearing is implemented. The Board received confirmation from public health authorities that the exemption will be granted pending specific criteria being met around the time of the meetings. ...

.... Intervenors who are unable to attend in Pond Inlet or at a hub, will be provided with options to participate from other locations through a combination of audio and/or video feeds. In contrast to the Board's previous arrangements, the arrangements for parties unable to attend at a hub, will provide opportunities for

two-way communication for remote attendees. This will include being able to view the video feed of the proceedings online or to access the audio feed by telephone, and also being able to make presentations or participate in discussions by phone or via the on-line audio feed. Parties attending in-person in either Pond Inlet, or the hub in Iqaluit will be able to participate and make their presentations from either location..

20. Baffinland is of the view that the Board's proposed hearing schedule and process is appropriate and that the use of audio and video technology strikes the appropriate balance between COVID-19 safety and opportunities to participate.

The NIRB Has Discretion to Set its Own Procedure

21. Under s. 26 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*), the NIRB has been delegated the statutory authority to set its own procedures, and it has great latitude to set those procedures. This authority was also granted to the NIRB under the Nunavut Agreement. Those procedures are subject to the principles of fairness, the application of which must be determined according to the context.¹
22. Courts have been clear in stating that boards and tribunals can adopt procedures that are flexible such that they are able to meet the demands of a particular context of a hearing.²
23. The important thing to consider in the context of the Motions is the need for the NIRB to respect its mandate while allowing for sufficient opportunity, in the circumstances, for Parties and community members to participate. In the circumstances, respecting the Board's mandate means proceeding with the next stage in the review process, the recommencement of the Public Hearing.
24. Allowing for safe participation by Parties and community members means some adjustments to the NIRB's previous practices in the given circumstances. In Baffinland's

¹ *Re: Sound v. Fitness Industry Council of Canada*, 2014 FCA 48 at para. 37; *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560 at 568-569.

² *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 at paras. 242-258.

submission, the NIRB's proposed schedule and procedures for the resumed Public Hearing strikes a reasonable balance in fulfilling its mandate by recommencing the Public Hearing, together with opportunities for participation by Parties and community members.

25. It is important to remember the foundation of the Board's process is found in Article 12 of the Nunavut Agreement, which has been adopted into legislation under *NuPPAA*. NIRB's mandate and processes are fully consistent with section 35 of the *Constitution Act, 1982*.
26. Baffinland notes that one example of the Board's adjustment to its process is the addition of days to the Community Roundtable portion of the resumed Public Hearing. In November 2019, four days of Community Roundtable were originally scheduled (November 5 - 6 and November 8 - 9, 2019). The Community Roundtable portion of the resumed Public Hearing is now scheduled for six days (February 1 - 6, 2021). As another example, the Community Roundtable held as part of the third Technical Meeting provided additional opportunities for public and community participation in the process. We note that both the MHTO and Clyde River have Party status to participate in all aspects of the review process.
27. The NIRB has carefully assessed the current situation in making their determination as to the appropriate procedures to put in place to allow for sufficient public participation. The NIRB has indicated that it is in contact with public health authorities with respect to ensuring safety during the proceeding. The NIRB has the experience and wisdom to decide what procedures are needed in the current circumstances to support the NIRB's mandate and decision-making process.

Other Tribunals Have Proceeded with Hearings

28. It is general knowledge that courts, administrative bodies and tribunals across Canada have proceeded with their processes during the COVID-19 pandemic, making adjustments as necessary, which may include relying on in-person components as well as

audio and video technology in order to fulfil their mandates. Such adaptation is appropriate in the current circumstances.³

Consequences of Delay in Recommencing the Public Hearing

29. In the PHC Decision Report, the Board acknowledged the following:

The Board heard from the Proponent ... that delays in the completion of this assessment beyond December 2020, resulting in the NIRB and Minister's decision-making extending into the first half of 2021, are having and will continue to have significant adverse financial consequences, and that these effects, when combined with the detrimental impacts of the COVID-19 pandemic may significantly affect the continued viability of the approved Mary River Project.

30. As Baffinland has stated previously in this review process, the Mary River Project at the current 6 MTPA permitted production levels remains highly vulnerable to changes in iron ore prices and the requirement for new investments in aging infrastructure and equipment. The increase to 12 MTPA included in the Phase 2 Proposal is designed to support long-term financial stability in relation to fluctuating iron ore prices and by lowering the cost of transportation.

31. COVID-19 continues to have a significant and negative financial impact on the Mary River Project. The necessary safety protocols that have been implemented in order to continue mining operations, such as increased sterilization and hygiene measures and employee testing, have a financial cost. Since March 11, 2020, Baffinland has temporarily advised all Nunavummiut employees to not report to the mine site for work

³ See for example https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3968494/4004669/4025654/C10012%2D1_MH%2D032%2D2020_List_of_Participants_and_opportunity_to_comment_on_proposed_Hearing_process_%2D_A7LIT2.pdf?nodeid=4025655&vernum=-2

https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3968494/4017372/4017374/4029047/C10357%2D1_2020%2D12%2D11_EKH_to_CER_%2D_Comments_on_Proposed_Hearing_Process_%2801925474%29_%2D_A7L6Z5.pdf?nodeid=4029048&vernum=-2

and to remain in their home communities to keep them safe. This was determined to be a necessary temporary safety measure for Nunavummiut staff, as well as their home communities. Baffinland has continued to pay wages to its affected employees since their absence from the site almost 10 months ago. While justifiable, this has come at a substantial cost to the company and there is still no certain date when our Nunavummiut staff can return to work again.

32. It continues to be important that the Public Hearing complete as scheduled in order to prevent the loss of the 2021 sealift season, should the Phase 2 Proposal be approved. Delays in reaching a final decision on the Phase 2 proposal have a cascading effect on the ability to complete key planning, permitting and construction activities which may result in an extended construction schedule of a year or more. These delays fracture the confidence investors have in the ability to re-coup monies invested to date or to provide additional funding to maintain the operation while critical future decisions are made. There is a significant consequential effect of delaying sealift planning and Baffinland's ability to pursue other key permits needed to proceed with construction, should the Phase 2 Proposal be approved.

Specific Response to MHTO Motion to Adjourn

33. In its motion to adjourn, the MHTO made several statements to which Baffinland would like to respond.
34. In paragraphs 6-10 of the MHTO's Motion, the MHTO makes reference to the Supreme Court of Canada's *Clyde River* decision. In response, it is important to note the *Clyde River* case involved processes of the National Energy Board. Those processes are quite distinct from the NIRB's, which, as noted above, has its processes rooted in the Nunavut Agreement and *NuPPAA*. It is also important to remember the NIRB process is Inuit-led and is designed to include extensive Inuit participation at every stage of the process.
35. In response to paragraph 11 of the MHTO's Motion, while the Board did postpone the Technical Meeting scheduled from March 16-25, 2020, this was because it was scheduled prior to COVID-19 restrictions being put in place and needed to be rescheduled to adjust

to new norms. The Board ultimately held the Technical Meeting from September 14-18, 2020, as well as a Community Roundtable from September 28-30, 2020. These proceedings occurred with the effective use of health and safety protocols, conferencing technology and follow-up opportunities for community members to submit questions or concerns in writing. As indicated in the NIRB's PHC Decision Report, participants were "pleasantly surprised that the technology chosen and implemented was robust and effective."

36. In response to paragraphs 12 through 20 of the MHTO's Motion, as noted previously, in setting out its procedures the Board has given careful consideration to fulfilling its mandate, protecting public safety and providing for opportunities to participate. This balancing is set out by the Board in its July 29, 2020 letter, the PHC Decision Report, and its letter of December 18, 2020 providing an update to procedural direction. It is Baffinland's submission the Board has found a reasonable balance.
37. In response to paragraph 14 of the MHTO's Motion, statements by the Supreme Court of Canada about internet speed in Nunavut in 2013 are not relevant to the current proceeding. They do not take into account the measures the NIRB has taken with respect to internet access or the NIRB's accessible public registry. In addition, since 2013, the internet and audio-visual technology have advanced significantly. Further, audio-conferencing and video technology were used successfully at the Technical Meeting and Community Roundtable in September 2020.
38. In response to paragraph 16 of the MHTO's Motion, notice was given of the date for resumption of the Public Hearing in the PHC Decision Report released October 30, 2020.
39. In response to paragraph 17 of the MHTO's Motion and paragraph 12 of the Affidavit of Eric Ootoovak, all Parties face challenges in consulting with their advisors, and the Board has indicated it will be flexible if such challenges arise. In the context of COVID-19, all Parties have adapted and are using technology to facilitate communication. Further, at the Technical Meeting in September 2020, many technical experts were located in different areas in the south, and this did not impede the proceedings; instead, Parties indicated that the Technical Meeting proceeded smoothly.

Specific Response to Hamlet of Clyde River Motion

40. In its motion, Clyde River made several statements to which Baffinland would like to respond.
41. In response to paragraph 1 of Clyde River's Motion, Baffinland notes that the NIRB has followed current public health guidance in setting the proposed guidelines for the Public Hearing and has stated they will continue to consult with the Chief Public Health Officer of Nunavut to ensure they are following appropriate guidance.
42. In response to paragraph 2 of Clyde River's Motion, Baffinland notes that, as stated above, the Board has given careful consideration to fulfilling its mandate, protecting public safety and providing for opportunities to participate. In Baffinland's submission, the NIRB's proposed procedures strike the right balance of those factors.
43. In response to paragraph 3 of Clyde River's Motion, Baffinland states that the NIRB has provided sufficient time throughout the process for Parties to provide their submissions.
44. In response to paragraph 4 of Clyde River's Motion, Baffinland states that there is no basis for a suggestion that the format for the Public Hearing creates a bias in favour of the proponent.
45. In response to paragraph 5 of Clyde River's Motion, the Board has made a reasonable balance taking into account public health orders in the current circumstances. Further, it is inappropriate to put the Phase 2 Proposal on indefinite pause.
46. In response to paragraph 6 of Clyde River's Motion, Baffinland refers the Board to paragraphs 27-30 of this Response.

Conclusion

47. It is Baffinland's submission that the motions of the MHTO and Clyde River to adjourn the Public Hearing should not be granted, and the Public Hearing should recommence as scheduled from January 25 to February 6, 2021.

Dated January 6, 2021

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Appendix A

Executive Summary, PHC Report

There have been many developments in the eleven months since the Nunavut Impact Review Board (NIRB or Board) suspended the Public Hearing associated with the Board's reconsideration of the Phase 2 Development Proposal, a change to the previously-approved Mary River Project. In particular, the Board acknowledges the unprecedented effects on everyone resulting from the public health response to the novel corona virus (COVID-19) global pandemic. Public health protection measures put in place in March 2020 had an immediate effect on the Board's ability to continue this assessment, with the Board having to cancel all in-person proceedings for several months. In July 2020, with the easing of some restrictions on the numbers of people who could attend indoor gatherings and clarification of isolation and travel restrictions into Nunavut, the Board worked with public health authorities in Nunavut to modify the Board's normal in-person processes and develop procedures for holding meetings in respect of public health orders in Nunavut and the rest of Canada. The Board's recent completion of the third Technical Meeting, and the modified in-person and video-linked Community Roundtable and Pre-Hearing Conference for the Phase 2 Development Proposal in September and early October demonstrate that with the pioneering use of new technology and modifications to existing in-person meeting processes, it is now logistically possible to hold in-person proceedings in a manner that maintains the health and safety of all participants and communities involved, while delivering on the Board's objectives for in-person proceedings.

Having piloted the Board's modified in-person proceedings, the Board has now turned to the consideration of whether the resumption of the Public Hearing is not only technically possible, but also reasonable, given the resolution of technical issues and advancement of understanding of the Phase 2 Development Proposal and its potential effects amongst Intervenors and potentially affected communities.

The Board reminds all parties of the primary reasons cited by the Board when granting the motion of Nunavut Tunngavik Incorporated to pause the Public Hearing in November 2019:

- Parties had identified that uncertainty and significant information gaps existed in relation to the assessment of the Phase 2 Development Proposal;
- Intervenors, particularly, community-based Intervenors, had been challenged to have adequate time and resources to review and translate information; and
- Overall, in the potentially affected communities in the North Baffin there appeared to be a lack of understanding of the Phase 2 Development Proposal and the potential for impacts, and an associated erosion of trust in the process.⁴

At that time, the Board also conveyed the expectation that in advance of the Public Hearing resuming, Baffinland and the parties should work together to:

- Provide the Board with a clearer picture of the views of Baffinland and the Intervenors regarding resolved and outstanding technical issues;
- Ensure that the communities potentially affected by the Phase 2 Development 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 socioeconomic effects; and
- Engage the Intervenors and communities affected by the Phase 2 Development Proposal so that their views, concerns and questions can be identified, considered and addressed in a pro-active and collaborative fashion.

As set out in more detail in the Pre-Hearing Conference Decision Report that follows, the Board has concluded that, although not all Intervenors and communities agree that all issues have been addressed to their satisfaction, significant progress has been made to date during meetings between parties since November 2019 and during the recent Technical Meeting, Community Roundtable and Pre-Hearing Conference. Specifically, progress has enabled the parties to:

- Identify the nature and extent of resolved and unresolved issues;

⁴ IRB File No.: 08MN053, Record of Proceedings and Disposition of Motions Report for the November 2019 Public Hearing in respect of Baffinland Iron Mines Corporation's Phase 2 Development Proposal of the Mary River Project, December 16, 2019 (Doc ID. 327790).

- List the 188 specific commitments developed by the Proponent and parties to address technical issues; and
- Demonstrate efforts to engage directly with potentially affected communities to foster greater understanding of the Phase 2 Development Proposal and potential impacts.

The Board also considered the following to decide whether it is reasonable to resume the Public Hearing in the current circumstances:

- the additional written submissions provided by parties to the Board since December 2019;
- the notification provided by the Minister of Northern Affairs under s. 114 of the Nunavut Planning and Project Assessment Act, S.C. 2013, c. 14, s. 2 (NuPPAA) that the resumption of the Board's proceedings in respect of the file should be a priority;⁵
- the successful conclusion of the third Technical Meeting in September 2020;
- the questions, comments and closing statements provided by community members during the Community Roundtable;
- the feedback of the Intervenors provided during the Pre-Hearing Conference; and
- the successful implementation of the Board's COVID-19 Protocols to carry out modified in-person proceedings during the Community Roundtable and Pre-Hearing Conference.

Although the Board acknowledges that many parties may be comfortable with only resuming the Public Hearing when the COVID-19 pandemic is over and the Board could return fully to our pre-pandemic processes, this is not a reasonable approach. The Board heard from the Proponent, Baffinland Iron Mines Corporation (Baffinland or the Proponent) that delays in the completion of this assessment beyond December 2020, resulting in the NIRB and Minister's decision-making extending into the first half of 2021, are having and will continue to have significant adverse financial consequences, and that these effects, when combined with the detrimental

⁵ Email dated July 14, 2020 from Hon. D. Vandal, Minister of Northern Affairs to K. Costello, NIRB (Doc ID: 330898).

impacts of the COVID-19 pandemic may significantly affect the continued viability of the approved Mary River Project.

In addition, with recent experience carrying out modified in-person proceedings, the Board is more confident that it is possible to keep everyone safe, and also to recreate, as much as possible, the same experience as an in-person proceeding. The Board understands from the feedback provided by participants that there are improvements to be made to the Board's modified processes, particularly to ensure that greater numbers of community members can participate, and the Board appreciates participants sharing their ideas for improving the Board's processes. The Board notes that improvements to the Board's COVID-19 Protocols will be on-going to incorporate feedback, but also to reflect the changes to applicable public health measures (such as the recent increase to the maximum number of people permitted in a single indoor location in Nunavut).

Based on all of these considerations, the Board has determined that it is now reasonable to schedule the resumption of the Public Hearing for the Phase 2 Development Project, to take place in-person in the primary location of Pond Inlet in late January and early February, 2021 starting in the week of January 25 and to be completed by February 6, 2021. Based on current indoor public gathering limits, the Board anticipates that it will be necessary to video-link Pond Inlet to a hub in Iqaluit (however the availability and locations for video-linked hubs outside of Nunavut have yet to be determined as more stringent public health measures are currently in place in Winnipeg and Ottawa). Precise details, dates and locations will be confirmed in the days to come in the Notice of the reconvened Public Hearing, and in project-specific procedural guidance. The Board reserves the right to alter the schedule, locations and modified processes for holding the reconvened Public Hearing as may be necessary to comply with applicable public health measures, and appreciates the patience and flexibility of all parties as we work collaboratively to resume the Public Hearing.

In closing, the Board would like to thank all of the Community Roundtable and Pre-Hearing Conference participants for their adaptability and cooperation as the Board pioneered a new approach to conducting in-person proceedings in the face of considerable limitations imposed by COVID-19 public health measures. This was truly an exceptional and challenging undertaking

for us all and the Board is grateful for the contributions of all participants to the successful completion of these important proceedings and allowing the Board to test and improve our new COVID-19 Protocols.