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Kaviq Kaluraq
Chair, Nunavut Impact Review Board
Nunavut Impact Review Board
Cambridge Bay, Nunavut

BY EMAIL info@nirb.ca

January 7, 2021

Re: Invitation for Parties to Comment on Motions from the Hamlet of Clyde River and the MHTO related to the Public Hearing for Baffinland's "Phase 2 Development Proposal"

Dear Madam Chair,

This letter constitutes Oceans North's response to the invitation to comment regarding the motions respectively filed by the Hamlet of Clyde River and the Mittimatalik Hunters and Trappers Organization (MHTO). We also direct the Board to our correspondence of December 18, 2020 in which we expressed our view that proceeding with public hearings is not in the public interest in the current context of the COVID-19 pandemic.

Oceans North strongly supports both motions requesting an adjournment of public hearings.

The concerns we expressed on December 18 are, not quite three weeks later, only heightened by the present public health situation in many parts of Canada. Today, Nunavut's Minister of Health Lorne Kusugak has extended the territory's public health emergency until January 21, 2021. A provincewide shutdown is in effect in Ontario until at least January 23, 2021. Grim records are being set; as of today, Ontario recorded its highest numbers of COVID-19 cases, along with the highest number of deaths. While Nunavut has so far escaped the worst of this pandemic, recent experiences have shown us all that there is a fine line between community containment and outbreak and the consequences of uncontrollable spread are devastating.

In their Notice of Motion, the MHTO rightly identifies the Board's primary objective, "to at all times protect the existing and future well-being of residents and communities of the Nunavut Settlement Area, as well as the well-being of residents of Canada." The COVID-19 Pandemic adds a new layer to this already great responsibility – the duty to ensure community wellbeing applies just as much in the hearing process as it does when the Board is asked to consider impacts to marine mammals from unprecedented shipping.

Indeed, as Clyde River and the MHTO have argued, it is the seriousness of the consequences of this hearing that necessitate an adjournment. Constitutionally-protected rights are implicated, not to mention the inescapable fact that the development trajectory of this project will have profound impacts on the environment and economy of this region for generations.

Even if we were not currently experiencing a surge in the pandemic, we are in agreement with both Clyde River and the MHTO in their respective arguments that the proposed "hub" format effectively divides communities and will isolate the most impacted community and its citizens and will deprive parties of access to experts (including elders and government experts), intervenors, and counsel.

We are sympathetic to the efforts that NIRB staff have made to facilitate to recommencement of this process. At this time (and with only 12 business days before the scheduled restart of hearings), we do not believe that communications tools and connectivity are sufficient to replicate an in-person hearing process and we take the position that any attempts at a virtual hearing would not permit the NIRB to fulfil its mandate. Similarly, parties have acknowledged that consultation obligations with Inuit are engaged in the context of these Phase 2 hearings, necessitating additional care.

As we indicated in our December 18, 2020 letter to the Board, we respectfully submit that it is improper for the Board to consider the Proponent's unsubstantiated position that delays in the Phase 2 assessment process present an existential threat to the viability of the Mary River Mine. We anticipate that the Proponent will continue to assert that the continued viability of the Mary River Mine is in jeopardy if the Phase 2 railway and port expansion are not approved. We will continue to insist that this assertion cannot be made without an evidentiary basis.

We make no specific recommendation regarding the details of an adjournment order except to suggest that broad public vaccination can now be anticipated and should inform such planning.

Finally, Oceans North supports the additional proposal from the Hamlet of Clyde River to include intervenor presentations to Community Roundtable participants.

Given the fact that numerous parties, including ourselves, have made submissions regarding the Final Public Hearing Agenda, we suggest that it may be premature to argue over one aspect of the agenda until the Board has had an opportunity to consider and respond to the recommendations that it solicited. In any event, we did not interpret the Board-imposed deadline on motions to preclude motions regarding any issues that arise regarding a subsequent agenda draft.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Christopher Debicki', with a long horizontal flourish extending to the right.

Christopher Debicki

Vice-President (Policy Development) and Counsel

Oceans North