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January 8, 2021

Karen Costello Executive Director Nunavut Impact Review Board P.O. Box 1360 Cambridge Bay, NU, X0B 0C0

RE: Invitation for Parties to Comment on the Motions from the Hamlet of Clyde
River and the Mittimatalik Hunters and Trappers Organization, received on
December 17, 202 related to the Resumption of the Public Hearing for the
Mary River Project "Phase 2 Development Proposal"

Dear Mrs. Costello,

Thank you for the opportunity to comment on the Motions from the Hamlet of Clyde River and the Mittimatalik Hunters and Trappers Organization (MHTO) related to the resumption of the Public Hearing for the Mary River Project "Phase 2 Development Proposal" (Phase 2).

In mid-November, Territory-wide public health restrictions, including limits on indoor inperson gathering and limits on non-essential travel put in place to reduce the risk of
COVID-19 transmission in communities indeed presented significant challenges for
proceedings requiring fulsome participation of Parties and communities in a public forum.
Since public health restrictions were implemented, the NIRB has demonstrated its ability
to hold in-person proceedings in a manner that maintains the health and safety of all
participants and communities involved. With the completion of the third Technical
Meeting, and the modified in-person and video-linked Community Roundtable and PreHearing Conference for Phase 2 in September and early October, the NIRB has
demonstrated it's logistically possible to conduct in-person proceedings in the face of
considerable limitations imposed by COVID-19 public health measures.

With respect to the motions to Postpone the Public Hearing for Phase 2 until March 2021 (Clyde River), and to adjourn the Public Hearing on Phase 2 until such time as there is widespread availability and administration of a COVID-19 vaccine in Nunavut, travel restrictions and mandatory 14-day isolation are lifted, and limitations on the number of persons allowed to gather indoors permitted are at a minimum 100 people (MHTO): in our view, the requested relief is not necessary and are not supported by law. Not only has

the NIRB demonstrated that it is able to accommodate the public health restrictions while providing a meaningful hearing, current commonwealth case law supports relying on creative solutions, like the NIRB has employed, rather than indefinitely postponing matters. Importantly, the NIRB has a legislated obligation to discharge its duties; the pandemic does not remove those obligations; and the challenges posed by the public health orders are not new and have been known since the public health emergency began.

Accordingly, although we acknowledge that many Parties may not be comfortable with resuming the Public Hearing until such time when the COVID-19 pandemic is considered over and the NIRB can return fully to its pre-pandemic processes, as acknowledged in the NIRB's Pre-Hearing Conference Decision Report, we agree with the NIRB that this is not a reasonable approach. Particularly, in light of the considerable logistical effort and cost the NIRB has adapted to modify its in-person proceedings, the significant background planning currently being undertaken by the NIRB for these proceedings, and the NIRB's obligations to discharge its legislated duties, it is reasonable to us that the Public Hearing reconvene per the dates identified in the Pre-Hearing Conference Decision Report.

With respect to the MHTO Motion for an order by the Board to Amend the Final Public Hearing Agenda issued December 7, 2020 to include presentations by Intervenors to Community Roundtable participants during Community Roundtable proceedings, we anticipate presentations will be given by Intervenors during the technical portion of the Public Hearing to report on the extent of resolved and unresolved issues and the substance of their interventions. To ensure adequate time is allocated to community members to question the Proponent on their proposal and to question Intervenors on their presentations and interventions to which community members will observe, time allocated during the Community Roundtable for presentations from Intervenors given during the portion of proceedings is duplicative and takes valuable time away from community members' ability to question and comment on the Phase 2 proposal and interventions.

Ultimately, we defer to the authority of the NIRB to deliberate on these matters. We hope our comments are helpful to the Board in their deliberations and look forward to its further guidance.

Qujannamiik,

[Original Signed By]

Natalie O'Grady Avatiliriniq Coordinator Government of Nunavut

¹ See namely: R v Komoatok, 2020 NUCJ 29; and Capic v Ford Motor Company of Australia Limited [2020] FCA 486.