



VIA EMAIL

January 7, 2021

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

Dear Ms. Costello,

Re: Public Hearing for Mary River Project - Phase 2 Development Proposal

Nunavut Tunngavik Inc. (NTI) is writing in response to the Nunavut Impact Review Board's (NIRB) request for comment to the motions relating to the resumption of the public hearing for the Mary River Project - Phase 2 Development Proposal (Phase 2 Proposal) submitted by the Mittimatalik Hunters and Trappers Organization (MHTO) and the Hamlet of Clyde River on December 17, 2020.

The motions speak to providing for a level of Inuit engagement in the public hearing process that ensures: i) procedural fairness, ii) fulfillment of the obligations under the Nunavut Agreement and the Nunavut Planning and Project Assessment Act (NuPPAA), and iii) deep consultation as required to fulfill the Crown's duty to consult.

NTI supports accommodations that address the motions to ensure a level of Inuit engagement in NIRB's public hearing process that meets these fundamental obligations and requests that NIRB make accommodations to address the concerns referenced in the motions including providing for a reasonable delay in the timing of the public hearing.

Further flexibility and accommodations are necessary by NIRB to address the Inuit engagement issues raised in the motions and to meet the Nunavut Agreement obligation at section 12.2.24 that NIRB procedures "give due regard and weight to the tradition of Inuit oral communication and decision-making". NTI recognizes that NIRB has on previous occasions varied the process and procedures to facilitate Inuit engagement and argues that it is necessary to do so again.

The situation has changed since NIRB issued its Pre-Hearing Conference Report on October 30, 2020 specifying that the public hearing would begin the week of January 25, 2021. Since the release of the NIRB report, Nunavut has experienced an outbreak of COVID 19 that resulted in public health restrictions across Nunavut that significantly limited the ability of Inuit participants in this review process from meeting and preparing for the public hearing. Even under these difficult circumstances, communities have continued to work with parties including the proponent to reduce the number of technical issues before NIRB. However, correspondence to NIRB from the communities since the Pre-Hearing Conference indicates that there continues to be outstanding issues. A reasonable delay in the public hearing would allow the parties to continue to resolve issues and come to a mutual understanding on the Phase 2 Project Proposal, which would facilitate a successful public hearing.

Ideally, NIRB should be holding a full in-person public hearing with all the procedural safeguards in place to address Inuit rights and obligations. If an alternative process is necessary, the process must still provide for meaningful Inuit participation that complies with procedural fairness, Nunavut Agreement and NuPPAA obligations, and deep consultation requirements.

The MHTO motions list accommodations that would increase Inuit engagement including:

- allowing for 100 people in the hearing rooms in Pond Inlet and Iqaluit;
- ensuring an open hearing where people are not turned away;
- providing for community roundtable representatives to be in one venue; and
- amending the public hearing agenda to allow presentations by interveners during Community Roundtable proceedings.

NTI agrees that these accommodations are important for adequate Inuit engagement and supports their implementation in a manner that ensures the health and safety of participants. NIRB, in part, dealt with increasing the number of participants at venues in the December 18, 2020 letter that provided an update on procedural direction by stating:

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.

More clarity is required from NIRB on the scope of the exemption and whether up to 100 people may attend at venues and with what restrictions. At a minimum, priority should be given to the needs of community representatives, including their request to participate collectively in one venue. Efforts of Inuit to collaborate, communicate, present and participate in Inuktut should not be limited in the public hearing process. It is vital that Inuit are able to confer with each other in-person to build a shared understanding of the substantive issues including possible mitigation measures and actions that are central to this review process.

Additionally, it appears unlikely that a southern hub during the public hearing will be possible in the near future due to rising COVID 19 cases in the south and the expected expansion of restrictions. More clarity is required on the impact of not having a southern hub and whether additional accommodations will be required.

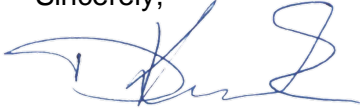
As stated in our previous correspondence to NIRB, the Phase 2 Proposal cannot be of greater significance to Inuit as it impacts on fundamental Inuit rights and presents a number of opportunities related to stewardship, economic and employment benefits, if the proponent meets its obligations. The Phase 2 Proposal as envisioned will result in some level of impact to wildlife that Inuit rely on for harvesting, cultural practices and as a critical source of food and it continues to be unclear whether, and how, some of these impacts can be mitigated. As the Phase 2 Proposal, as currently presented, is likely to impact Inuit rights under the Nunavut Agreement, Inuit consultation rights must be fully respected and deep consultation requirements must be met.

NTI urges NIRB to make accommodations that support Inuit engagement in the public hearing process and to consider all the options available including a reasonable delay, taking into account current forecasts regarding the control of the pandemic and the preference for a public hearing that maximizes in-person participation. NTI recognizes that NIRB has been operating during an unprecedented time and we share our comments in an effort to ensure that the public hearing is successful.

Letter to NIRB

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Sincerely,

A handwritten signature in blue ink, appearing to read 'David Kunuk', with a stylized flourish at the end.

David Kunuk
Chief Operating Officer