

Baffinland Iron Mines Corporation's Mary River Phase 2 Proposal

NOTICE OF MOTION

The Mittimatalik Hunters and Trappers Organization (“MHTO”) submits this motion to the Nunavut Impact Review Board (“the Board”) on February 11, 2021 via email to info@nirb.ca.

THE MOTION IS FOR an order by the Board to:

1. Schedule the remaining Community Roundtable proceedings in Pond Inlet rather than Iqaluit;
2. In the alternative, set four additional days for Community Roundtable proceedings in Pond Inlet in addition to any Community Roundtable (“CRT”) dates scheduled in Iqaluit.

THE GROUNDS FOR THE MOTION ARE:

1. The Final Agenda issued by the Board on January 18th, 2021 provided for 5 ½ days of CRT sessions in Pond Inlet. However, only one CRT day occurred, on February 6th.
2. There are clear and compelling reasons for scheduling additional CRT dates in Pond Inlet.
3. As we have heard, Baffinland’s Phase 2 proposal contemplates a substantial increase in shipping through Milne Inlet and Eclipse Sound, past the community of Pond Inlet.
4. The proposed northern railway, the first railway that would be built in Nunavut, will be in close proximity to the community of Pond Inlet.

5. The presentations and participation by intervenors, and Baffinland, have made it clear that although the proposed Phase 2 will affect a number of hamlets and Hunters and Trappers Organizations, Baffinland’s current and proposed marine and land operations have the potential to impact the residents of Pond Inlet in the most significant way. For example, the marine component of the hearing has been centered on the impacts of project shipping on the narwhals and seals and Arctic char in Milne Inlet, which is the “front yard” and primary source of country food for the residents of Pond Inlet.

6. The Board and the various intervenors have recognized the importance of holding the CRT in Pond Inlet. In the Pre-Hearing Conference Decision Report (the “Report”), under section 4.2.1, item 2(a) (*Anticipated date, time, form, and location(s) to reconvene the Public Hearing*), the Board noted:

The Hamlet of Pond Inlet and Arctic Bay indicated that a Public Hearing may be held no earlier than January/February 2021, and that **the location for the Public Hearing should be in Pond Inlet**. (emphasis added)

7. Further, in the Report, under section 5 (*Conclusions of the Board*), the Board noted:

Also, the Board would like to clarify that the meeting locations outside of Pond Inlet are for registered guests only with no public admissions.

8. We raise that point because Iqaluit has not been set up to accommodate members of the public, and Pond Inlet serves a very important purpose in this regard.

9. Finally, the five North Baffin communities wrote to the Board on December 16th, 2020 in respect of the draft hearing agenda, and noted:

We request that all Community Roundtable representatives be accommodated at one location, and submit that Pond Inlet is in fact, the most appropriate location for all community representatives’ participation.

10. As we have stated in prior motions, the Board must ensure that all of the parties are given an opportunity to present their case fully and fairly.¹

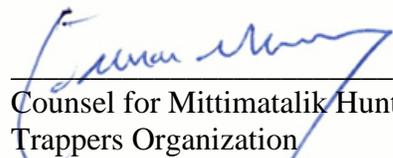
¹ *Baker v Canada (Minister of Citizenship & Immigration)*, 1999 SCC 699 at para 28.

11. Although not technically a “party”, community members’ participation is a fundamental and mandatory component of the Board’s process, and reducing the available time for Pond Inlet residents from 5 ½ days to 1 does not provide the community of Pond Inlet with a reasonable opportunity to present concerns and ask questions, and does not allow for participation in a manner that is full and fair. Further, allowing only 5 Pond Inlet representatives at the CRT in Iqaluit does not mitigate the lost hearing dates for the community of Pond Inlet.
12. The next dates for the CRT have not been set. This is the ideal opportunity for the Board to ensure that the public component of the hearing is properly carried out, by adding additional dates in Pond Inlet.
13. Scheduling additional dates in Pond Inlet will also allow the Board to best hear about the potential impacts that the Phase 2 project may have on local Inuit treaty rights, and to hear and respond to questions and comments from Community Roundtable representatives in a direct and meaningful way. This would also provide the Board with a more fulsome evidentiary record with which to make its recommendations in the public interest.

THE FOLLOWING DOCUMENTARY EVIDENCE is relied upon in support of this motion:

1. Pre-Hearing Conference Decision Report dated October 30, 2020; and
2. North Baffin community letter to the Board dated December 16th, 2020.

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