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November 15, 2021

Nunavut Impact Review Board  
PO Box 1360  
Cambridge Bay, NU X0B 0C0

via email: [info@nirb.ca](mailto:info@nirb.ca)

Attention: Kaviq Kaluraq, Chairperson

Dear Ms. Kaluraq:

**Re: Comments of the Mittimatalik Hunters and Trappers Organization (“MHTO”) on the admissibility of materials submitted by Denmark and Greenland (the “Espoo Materials”) under *The Convention on Environmental Impact Assessment in a Transboundary Context* (the “Espoo Convention”) – NIRB File No. 08MN053**

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1. These submissions have been made in response to the Nunavut Impact Review Board’s (the “Board”) November 1, 2021 invitation to file written submissions addressing the question of whether the Espoo Materials should be admitted on the Public Hearing Record for this assessment.
2. MHTO submits that the Espoo Materials are highly relevant to the Board’s assessment of the “Phase 2 Development Proposal” (“Phase 2”) and should be admitted on the Public Hearing Record. Further, the addition of the Espoo Materials would not prejudice or harm a party or the Board’s proceedings.
3. The Espoo Convention is a legally binding treaty to which Canada is a party. The Espoo Convention sets out the obligations of parties to carry out an Environmental Impact Assessment of certain activities at an early stage of planning and the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

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4. The Espoo Materials are relevant to the Board's assessment because of Canada's obligations under the Espoo Convention and the Board's obligations under the *Nunavut Planning and Project Assessment Act* ("NuPPAA") to consider transboundary impacts.
5. The Espoo Materials will not prejudice or harm any of the parties. Any potential prejudice can be mitigated if the Board allows all parties to comment on the substance of the Espoo Materials. Considering the obligations of Canada and the Board, the importance of considering transboundary impacts outweighs any potential prejudice that cannot be mitigated.

**The Espoo Materials are relevant to the Board's assessment of Phase 2.**

6. The Espoo Materials describe the transboundary impacts of Phase 2 on Greenland and its surrounding marine environment. The Greenland Ministry for Agriculture, Self-Sufficiency, Energy and Environment Ministry (the "Ministry") requested Canada initiate an Espoo process in 2020. Baffinland provided the Ministry with an Espoo Report in 2021. Under the Espoo Convention, an Espoo Report must describe and assess the transboundary impacts of a project.
7. The Ministry's report indicates that Baffinland's Espoo Report fails to consider the impacts of shipping through Baffin Bay and along the west coast of Greenland.<sup>1</sup> The Ministry notes the failure of the Espoo Report to adequately address potential transboundary impacts on narwhals and belugas; bowhead whales; walruses; and risks around oil spills and shipping in the sensitive marine area, Store Hellefiskebank.<sup>2</sup>
8. The Espoo Materials include the Ministry's report and letters from Greenland's Ministry of Fisheries and Hunting;<sup>3</sup> Qeqqata Kommunia;<sup>4</sup> the Association of Fishers & Hunters in Greenland;<sup>5</sup> Greenland's Institute of Natural Resources;<sup>6</sup> Oceans North;<sup>7</sup> the World Wildlife Federation;<sup>8</sup> and the Greenland Business Association.<sup>9</sup> These letters largely

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<sup>1</sup> 211029-08MN053 at 1.

<sup>2</sup> 211029-08MN053 at 2-3.

<sup>3</sup> 211029-08MN053

<sup>4</sup> 211029-08MN053

<sup>5</sup> 211029-08MN053

<sup>6</sup> 211029-08MN053

<sup>7</sup> 211029-08MN053

<sup>8</sup> 211029-08MN053

<sup>9</sup> 211029-08MN053

support the conclusions of the Ministry and further describe potential transboundary impacts and deficiencies in the Espoo Report.

9. As such, the Espoo Materials will provide relevant information to the Board -and indeed some of the only information on the record- on the transboundary impacts of the project and the extent to which Baffinland has considered and mitigated for such impacts.
10. Under the Espoo Convention, Canada is obligated to consider the transboundary impacts of proposed projects through an impact assessment process. The Government of Canada is relying on the Board's process to fulfill its obligations under the Espoo Convention.
11. The Board has a statutory obligation to consider transboundary impacts under *NuPPAA*. *NuPPAA* stipulates that the Board consider both the ecosystemic and socio-economic impacts of the project, *inside and outside* the Nunavut Settlement Area and the Outer Land Fast Ice Zone.<sup>10</sup>
12. The information contained in the Espoo Materials will aid the board in considering transboundary impacts in the application of the factors it must consider under *NuPPAA*. This includes the anticipated effects of the environment on the project; the cumulative ecosystemic and socio-economic impacts of the project; and, significant impacts to the capacity of renewable resources to meet the current and future needs of residents.<sup>11</sup>
13. The Espoo Materials will assist the Board to fulfill these obligations.

**The addition of the ESPOO Materials will not prejudice or harm a party or the Board's proceedings.**

14. The Espoo Materials will not prejudice or harm any of the parties. Regardless, any potential prejudice can be mitigated if the Board allows all parties to comment on the substance of the Espoo Materials.
15. Considering the obligations of Canada under the Espoo Convention and the Board's obligations under *NuPPAA*, the importance of including relevant information regarding transboundary impacts in the Board's assessment outweighs any potential prejudice that cannot be mitigated.

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<sup>10</sup> See *NuPPA*, section 2, *designated area*, and sections 5(2) and 113.

<sup>11</sup> *NuPPA*, section 103, subsections (d), (f), and (j).

**Further steps needed.**

16. MHTO submits that if the Board admits the Espoo Materials, the Board should use its discretion to establish and extend timelines to allow the parties to submit questions to the authors of the Espoo Materials, receive responses, and submit final written submissions regarding the Espoo Materials and any subsequent correspondence.
17. Further, should the Espoo Materials be allowed, and in light of the Board's obligation to consider transboundary impacts of Phase 2 and the requirement to consider Inuit oral traditions, the Board should exercise its discretion and allow up to two days of in-person sessions to allow Inuit from Greenland to speak alongside Inuit from the North Baffin region, and provide Greenland the opportunity to speak to the Board and respond to any questions other parties have.
18. Any delay caused by this process is outweighed by the benefits of providing an opportunity for the parties to fully consider the substance of the Espoo Materials and the issues related to transboundary impacts of Phase 2.
19. In the alternative, the Board should extend the deadline for the parties to submit their final written submissions and allow the parties to include comments on the substance of the Espoo Materials.

Yours truly,  
WOODWARD & COMPANY LAWYERS LLP

  
Eamon Murphy