

NUNAVUT IMPACT REVIEW BOARD
MARY RIVER PHASE 2 PROPOSAL
BAFFINLAND IRON MINES CORPORATION
NIRB File. No. 08MN053

**BAFFINLAND SUBMISSION ON ESPOO MATERIALS SUBMITTED BY
GOVERNMENT OF CANADA ON OCTOBER 29, 2021**

I. SUMMARY OF BAFFINLAND’S POSITION ON THE ESPOO MATERIALS

1. The following is Baffinland Iron Mine Corporation (“**Baffinland**”)’s response to the November 1, 2021 request by the Nunavut Impact Review Board (the “**NIRB**”) for written submissions with respect to the issue of whether certain materials filed by the Government of Canada on October 29, 2021 (relating to its obligations under the Espoo Convention) should be admitted on the public record for Baffinland’s Phase 2 Proposal (the “**Espoo Materials**”).
2. Baffinland does not take issue with the Espoo Materials being filed to the NIRB public registry. It is understood that the Government of Canada’s position is that the Espoo Materials should be distributed publicly in order to assist in fulfilling its obligations under the Espoo Convention.
3. However, it is Baffinland’s position that the Espoo Materials should only be placed on the public registry for public information purposes and that if they are placed on the registry, the NIRB should give limited weight to them. These materials were submitted to Greenland under its own separate public consultation process and are available on their own registry for public review. Greenland is not a party to the NIRB process. The Espoo Materials are not technical evidence in the NIRB’s assessment of the Phase 2 Proposal.
4. The following are Baffinland’s submissions with respect to the Espoo Materials.

II. GROUNDINGS FOR BAFFINLAND'S POSITION

Canada's Obligations under the Espoo Convention

5. On February 11, 2020, the Government of Denmark engaged with Canada with respect to the assessment of Baffinland's Phase 2 Proposal for the purpose of initiating the parties' engagement under the Espoo Convention (NIRB Registry Document No. 329169).
6. The Espoo Convention is an international convention that provides a mechanism for member parties, that is, nations, to engage for the purpose of determining whether a proposed project in one country may result in significant adverse transboundary impacts in the other member nation's sovereign territory, and if so, to discuss appropriate mitigation measures.
7. Following the February 11, 2020 communication from the Government of Denmark, Canada (as represented by the Impact Assessment Agency of Canada and the Canadian Northern Economic Development Agency) and the NIRB corresponded and engaged with the Government of Denmark for the purpose of determining the extent to which the Government of Denmark and the Government of Greenland wished to participate in the NIRB's ongoing Public Hearing of the Phase 2 Proposal.
8. On December 17, 2020, the Government of Greenland wrote to the NIRB and indicated that "Greenland does not intend to participate as intervenors or observers in the NIRB Public hearing." The Government of Greenland indicated its preference to provide its comments directly to the Government of Canada, which would then be shared with the NIRB. The Government of Greenland confirmed that it would focus its efforts on conducting public consultation in Greenland, and that it would prepare a "clear and concise document with information on the outcome of this consultation, which the Government of Canada will share with the NIRB and other relevant parties" (NIRB Registry Document No. 332137).
9. In order to facilitate the Government of Greenland's public consultation on the Phase 2 Proposal within Greenland, Baffinland prepared a comprehensive summary of its transboundary assessment for the purpose of assisting Canada in fulfilling its requirements under the Espoo Convention (the "**Espoo Report**"). While the obligation to provide such information was Canada's, Baffinland prepared the Espoo Report to assist Canada.

10. Following Canada's submission of the Espoo Report to the Government of Greenland in January 2021, on February 17, 2021 the Government of Greenland made several information requests to Baffinland with respect to the Espoo Report. Baffinland provided answers to these information requests, again, at Canada's request (the "**Information Request Responses**"). The Espoo Report and Information Request Responses were filed by Canada with the NIRB in a letter dated March 9, 2021. Follow up comments and responses were filed with the NIRB by Canada on April 9, 2021.
11. The Government of Greenland then undertook public consultation in Greenland on the Espoo Report, but not the Information Request Responses. This consultation took place from May 18 to June 15, 2021.¹
12. The documents proposed to be filed by the Government of Canada are documents it received from the Government of Greenland as part of Canada and Greenland's process to fulfill the obligations of those parties under the Espoo Convention. The Espoo Materials are summary submissions made by the Government of Greenland (the "**Greenland Consultation Summary Report**"), as well as from members of the public and organizations in Greenland in response to the public comment period held by the Government of Greenland between May 18, 2021 and June 15, 2021.
13. In its December 17, 2020 letter to the NIRB, the Greenland Government references a concise document with information on the outcome of the public consultation. Baffinland understands this to be the Greenland Consultation Summary Report. As noted, Baffinland does not take issue with this document in particular being filed on the NIRB registry for the Phase 2 Proposal, as the Government of Greenland indicated that it would provide this document to the NIRB instead of participating as an intervenor in the Public Hearing. It is noted that the Government of Greenland did not indicate in its December 17, 2020 communication that all public consultation materials received by Greenland would be provided to NIRB.

¹[https://naalakkersuisut.gl/da/H%3%b8ringer/Arkiv-over h%3%b8ringer/2021/1805 Mary River](https://naalakkersuisut.gl/da/H%3%b8ringer/Arkiv-over%h%3%b8ringer/2021/1805_Mary_River)

NIRB Should Give Limited Weight to the Espoo Materials

14. Baffinland submits that if the Espoo Materials are placed on the NIRB public registry for information purposes, the NIRB should give limited weight to them in the Phase 2 assessment because:
 - (a) the NIRB's review is separate from nation to nation processes under the Espoo Convention;
 - (b) Greenland has expressly declined to participate in the NIRB review of the Phase 2 Development Proposal; and
 - (c) the Espoo Materials are not technical evidence.
15. With respect to the first of these points, Baffinland understands that Canada has commitments to the Government of Denmark under the Espoo Convention. However, those commitments are between Canada and the Government of Denmark. Under the Espoo Convention, it is between the member parties – signatory nations – to engage with respect to whether a proposed project may cause any transboundary impacts, and if so, what mitigation measures may be adopted.
16. Under the Espoo Convention, the NIRB does not function as a decision-maker. Put another way, there is no requirement under the Espoo Convention for the NIRB to consider or come to any determination with respect to the Espoo Material. Instead, once the distribution of information with respect to the proposed project has been shared between signatory nations, it is the role of the “Party of origin” (in this case Canada) under the Espoo Convention to engage in consultations with the “affected Party” (in this case Greenland/Denmark) with respect to the potential transboundary effects and what measures might be taken with respect to any such effects.
17. With respect to the second point, Greenland has decided not to participate in the public hearing before the NIRB, but instead indicated its preference to share its comments with the Government of Canada. The Government of Canada is the decision-maker with respect to the Phase 2 Proposal and is the only party who will engage with the Government of Denmark with respect to any measures to be undertaken to fulfill Canada's obligations under the Espoo Convention.

18. Finally, pursuant to Rule 33 of the NIRB Rules of Procedure, “Relevant evidence” is defined to be “evidence having any tendency to prove or disprove a fact in issue.” The Greenland Public Comments do not “prove or disprove a fact in issue” but instead offer opinions of the Greenlandic public, as well as Oceans North and WWF, for the purpose of discussions between Canada and the Government of Denmark to engage in bilateral discussions at the national level regarding the appropriate manner in which to address any transboundary impacts of the Phase 2 Proposal. This is a further reason for the NIRB to give limited weight to the Espoo Materials in its assessment of the Phase 2 Proposal.

III. CONCLUSION

19. Baffinland understands Canada has requested the NIRB to file the Espoo Materials on the NIRB registry in order to fulfill its international obligations under the Espoo Convention. However, Baffinland submits that given the factors stated above, if the Espoo Materials are filed on the NIRB registry for information purposes, the NIRB should give limited weight to them in its assessment of the Phase 2 Proposal.
20. As for next steps, should the Espoo Materials be accepted for filing on the NIRB registry for all of the reasons above Baffinland is of the view it is not necessary for these documents to be circulated for the purposes of further comment. However, in the event the NIRB determines an additional comment step is necessary, Baffinland requests that all dates for comment set by NIRB are completed by and align with due dates for final written statements so that overall process timelines are not further extended by this late filing by Canada.

DATED at the City of Vancouver, British Columbia, this 15th day of November, 2021.

“Lawson Lundell LLP”

Lawson Lundell LLP
Solicitors for Baffinland Iron Mines Corporation