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Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

POSITION PAPER

Submitted to the ministère du Développement durable, de l'Environnement et des Parcs

concerning

**the government commitment to dedicate 50% of Plan Nord lands
to environmental protection, maintaining biodiversity,
promoting our natural heritage and a variety of types of development
that do not rely on industrial activities**

November 2011

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INTRODUCTION

The Kativik Environmental Advisory Committee (KEAC) was created pursuant to Section 23 of the *James Bay and Northern Québec Agreement* (JBNQA). The KEAC is a consultative body to responsible governments on matters related to environmental and social protection in Nunavik. As such, it is the preferential and official forum for the governments of Canada and Québec, the Kativik Regional Government (KRG) and the Northern villages.

The KEAC reviewed with interest the consultation document concerning the government commitment to dedicate 50% of Plan Nord lands to environmental protection, maintaining biodiversity, promoting our natural heritage and a variety of types of development that do not rely on industrial activities. The KEAC's mandate covers a large portion of the lands contemplated under the Plan Nord, and the KEAC has already produced several position papers on different topics discussed in the consultation document¹. The KEAC therefore considers it important to avail itself of the current public consultation to make comments on the proposed process.

GOVERNMENT COMMITMENT

The KEAC welcomes the goal to protect 50% of Plan Nord lands for purposes other than industrial activities by 2035. Notwithstanding, the KEAC considers that the set targets and timetables may be improved, in particular regarding protected areas. Although the percentage of protected areas has grown considerably in Québec over the last decade and the KEAC acknowledges the important gains made in this field, the KEAC considers that the objectives proposed for 2015 and 2020 must be more ambitious, in light of the government commitment to protect 50% of Plan Nord lands by 2035.

Close to 9.7% of Plan Nord lands are already designated or in the process of being designated as protected area. Currently in Nunavik, north of the 55th parallel, 1% of the

¹ Refer to the KEAC website: <http://www.keac-cceek.ca/en/publications/position-papers.php>.

region is already designated as protected area and 10% of the region is designated as “reserved” protected area while awaiting definitive protection status. Over the last few years, many proposed protected areas have been studied by the ministère du Développement durable, de l’Environnement et des Parcs (sustainable development, environment and parks, MDDEP) and the KRG, and could therefore be finalized quickly.

The scope and swiftness with which the effects of climate change are being experienced in Nunavik, their major impacts on the communities, as well as the eventual opening of the Northwest Passage argue for a preferential and accelerated review of the protection objectives for this territory. In the opinion of the KEAC, the government could establish special regulations and more ambitious objectives for Nunavik, with the support of the communities and local authorities. As well, it is clear that, if the government is to reach the 17% protected-area goal for the territory of the province², it must set more ambitious targets in the North to “compensate” for the many limitations in the South of the province. The vast territory covered by the Plan Nord can, in the opinion of the KEAC, have different targets according to the regions.

Given the fragile nature of Nunavik, the many distinct characteristics of the biophysical and human environments and the upheavals taking place, the KEAC considers that the protection objective must be increased and that at least 20% of Nunavik must be covered by a protected-area network by 2015. Moreover, given the current state of knowledge and to provide adequate environmental and Inuit social protection, it seems necessary that the government must commit in particular for Nunavik to a protected-area network coverage objective of more than 20% by 2020.

These new objectives should be combined with effective forms of protection for the remaining percentage of the territory, if the government wishes to comply with its 50% protection objective by 2035. The consultation document indicates that more than 26% of Plan Nord lands are currently subject to development activities (mineral exploration,

² As adopted in 2010, at Nagoya, Japan, by the 193 countries party to the Convention on Biological Diversity.

hydroelectric and forest projects)³. If the goal of balancing protection and development is to be met, work on protected areas must be accelerated.

Another commitment contained in the consultation document indicates that, by 2020, at least 5% of Plan Nord lands will be set aside as *areas of interest for conservation and non-industrial development*⁴. Although an interesting notion, this new conservation and protection designation raises several questions. What will be the legal status of set-aside areas dependent on “the special application of laws and administrative measures other than those related to protected areas”⁵? What will be process for identifying and conducting consultations for the creation of set-aside areas and what will be the criteria to terminate this status? How will the notions of “industrial development” and “non-industrial development” be defined? Will this type of protection be recognized internationally for the purpose of meeting conservation objectives⁶?

While future legislation and a strategy will help to answer these questions, the KEAC has identified another possible solution. Since the government has committed to comply with existing status and planning mechanisms, the KEAC considers that “category II lands”, as defined in the JBNQA, would match fairly closely permissible and desired uses in future *areas of interest for conservation and non-industrial development*. As well, a mechanism already exists to exempt portions of these lands from protection and to open them for industrial development, in return for the addition of a portion of equivalent lands. The KEAC considers that this mechanism possesses the required flexibility between use and protection, as well as complying with specific existing legal mechanisms known to the Aboriginals of the region. In the opinion of the KEAC, the government must, in its different protection measures for the lands covered by the Plan Nord, give “preferential

³ Consultation document, p. 18.

⁴ Also called “natural capital land reserves” in the consultation document, they are defined as “[z]ones that, while not enjoying protected area status, are sheltered from industrial activity and made available to the local population for the protection and promotion of biodiversity or for multiple types of development that are non-industrial in nature.” Consultation document, p. viii.

⁵ Consultation document, p. 3.

⁶ According to the consultation document, this additional 5% set-aside area will complete the 17% objective adopted by the parties to the *Convention on Biological Diversity*. It is not however certain that this new category, unknown in international circles, will satisfy international legal criteria regarding protection objectives.

consideration” to already designated category II lands. As well, the government must take advantage of the opportunity to initiate a review of category II lands in close cooperation with concerned stakeholders so that these lands may more accurately reflect Inuit needs and the region’s new realities given the current upheavals.

COMPLIANCE WITH EXISTING STATUS AND PLANNING MECHANISMS

The KEAC has noted that the government commitment will “neither amend, replace nor interfere with the laws, regulations, conventions and agreements that are in effect and that govern Plan Nord environmental protection, safeguarding biodiversity and land use planning and development” and that it will take “account of the interests of local inhabitants”⁷. The KEAC also welcomes the fact that five of the nine principles that will guide the government’s actions refer explicitly to the needs of Aboriginals in the region, compliance with specific Aboriginal-related legal mechanisms and consideration of the mechanisms that are already available to Aboriginal communities regarding territorial knowledge, planning and use⁸.

Regional land use planning is an important concern for Nunavik communities, even though the *Act respecting Land Use Planning and Development* does not apply north of the 55th parallel. The KEAC considers it important to recall the existence of the *Master Plan for Land Use in the Kativik Region*, which has been an official KRG by-law since 1998. The Master Plan sets out the general aims of land development and land use north of the 55th parallel, including those tied to the objectives contained in the proposed protection plan. Among other things, it identifies areas still used by Inuit that are of heritage, historical and cultural importance which, in the opinion of the KEAC, must be prioritized under the process to identify protection and conservation zones⁹. The Master Plan was moreover approved, in accordance with the law, by the ministère des Affaires municipales, des Régions et de l’Occupation du territoire (municipal affairs, regions and land occupancy).

⁷ Consultation document, p. 7.

⁸ Consultation document, pp. 26 and 27.

⁹ Take for example the Nastapoka and Kovic rivers which are exceptionally important sites for Inuit.

The KEAC also considers it important to recall KRG efforts to create, in cooperation with the ministère des Ressources naturelles et de la Faune (natural resources and wildlife), a regional commission on natural resources and the territory to be responsible, among other things, for preparing and carrying out an extensive public consultation on a regional plan for the integrated development of resources and the territory. The work on this plan is to be undertaken shortly and will permit over the short term the identification of areas that should receive immediate protection, those that should be reserved with “intermediate” protection measures, and those that should be open for industrial development.

The KEAC therefore recommends that the government focus on the existing *Master Plan for Land Use in the Kativik Region* and the future *Regional Plan for the Integrated Development of Resources and the Territory* to identify the lands in Nunavik to be designated for conservation and development. The KEAC would like the calculations for the 50% of lands to be dedicated for conservation to be carried out promptly with the production of conservation scenarios in order to allow different configurations of a conservation matrix to be compared and adapted concurrently with industrial development under the Plan Nord, but always with consideration for regional planning mechanisms.

As well, in order to give more weight to these regional planning mechanisms, the KEAC recommends that the proponents of proposed industrial projects in areas “reserved for protection” according to these planning mechanisms be required to prove the need to “declassify” such areas.

Using the tools described above, it appears to the KEAC that it is possible to identify by 2015 a total area equal to 50% of the territory of Nunavik designated as protected areas or as more preliminary and possibly reversible types of areas to be protected. Given the interest in developing the territory and Nunavik’s sensitive nature, the areas to be protected must be identified without delay.

The KEAC is moreover surprised that the consultation document contains no mention of the different categories of lands and rights established under the JBNQA.

ECOLOGICAL PLANNING

The KEAC welcomes the introduction of the notion of ecological planning for the lands that make up 72% of Québec. Ecological planning is in line with the requirements of sustainable development and the fact that healthy ecosystems are the foundation of quality economic and social development. Planning based on ecological requirements reflects the paradigm shift that has been effected with the adoption of sustainable development as a management approach. For its part, the *Sustainable Development Act* stipulates that to “achieve sustainable development, environmental protection must constitute an integral part of the development process”¹⁰.

Notwithstanding, in order to ensure real ecological planning, it is essential that the ecologically sensitive areas that are the basis of sustainable development be identified BEFORE industrial development projects motivated by economic feasibility are implemented throughout the territory. The KEAC therefore considers that the acquisition of knowledge and the identification of high-potential protection areas must be accelerated as was mentioned above and, to this end, the knowledge possessed by Aboriginal organizations be put to good use. The KEAC recommends that, over and above the areas already identified for their protected-area potential, mapping be performed for areas important for environmental protection, biodiversity and the social environment over the short term, which is to say by 2015.

The calculation of preliminary conservation scenarios must be based on in-depth cartographic analysis. These scenarios must moreover take account of the interconnectedness and fragmentation of the contemplated ecosystems, the key variables related to their resilience to ecological stress, their biological-support capacity and the biodiversity present.

¹⁰ *Sustainable Development Act*, section. 6(c).

As well, calculations for industrial-activity sites must take account of the *actual areas occupied* by the related facilities as well as the *areas affected* by these activities. For example, all project-related infrastructure (camps, quarries, landfill sites, wastewater treatment lagoons, etc.), transportation infrastructure (roads, wharves and landing strips), areas affected by contaminants as well as by the noise and visual pollution generated by the facilities, and areas affected by hydroelectric reservoir priming and operations must be taken into account. The assessment of industrial-activity sites and the areas affected by these activities is paramount and must be carried out accurately and transparently in consultation with the concerned communities.

Any proposed industrial development in designated conservation areas, according to the previously established scenarios, must be studied more thoroughly. These areas could be adjusted to match the evolution of knowledge and needs, pursuant to the compensation or replacement mechanism applicable to the affected communities. With respect to this compensation mechanism, the KEAC considers that, in accordance with its decision to protect 50% of Plan Nord lands from industrial development, the government is stating that for each unit of land affected, an equivalent area will be protected.

Plan Nord lands must not be perceived by development project proponents as an all-you-can-eat buffet. Rather, Plan Nord lands must be perceived as a territory with untouchable protected areas and, for the remaining parts, as a territory where each development project must be accompanied by a corresponding protection decision. The KEAC considers that mandatory compensation will encourage the different stakeholders to better prioritize their development projects, reduce the impacts of their projects, and contribute to the desired ecological planning.

Moreover, the KEAC reiterates the importance of a strategic environmental assessment procedure to obtain an overall vision of development of Plan Nord lands. A strategic environmental assessment could be complementary to ecological planning, making it possible to take account of the overall impacts of development projects in given areas. Moreover, regardless of whether their projects are subject to or exempt from an

environmental assessment procedure, the KEAC recommends that project proponents be required to take account of the overall impacts of their projects.

Finally, the KEAC considers it important to underscore the apparent contradiction between the ecological planning described in the consultation document and the notion of free mining that persists in Bill No. 14 regarding the revision of the *Mining Act*¹¹.

NOTION OF INDUSTRIAL ACTIVITIES

The notion of industrial activities is critical to the implementation of the government commitment and must be clarified if the proposed protection plan is to receive general approval. The government broadly defines¹² the types of industrial activity that could cover the 50% of Plan Nord lands available for industrial development. This definition is clearly inadequate and incompatible with the mechanisms established in sections 22 and 23 of the JBNQA and in the *Environment Quality Act*.

The *Environment Quality Act* makes a distinction between major projects with significant impacts on the natural and social environments, which are subject to environmental assessment (Division IV.1 for southern Québec and Chapter II for the James Bay and Northern Québec region which is governed by agreement), and projects with less significant impacts requiring sectoral authorizations (example: sections 22 and 32). Moreover, those projects subject to environmental assessment in territory governed by agreement are completely different than those for southern Québec. For example, all protected-area projects are automatically subject to environmental assessment in the north while, in southern Québec, they are not. Therefore, pursuant to Chapter II of the *Environment Quality Act*, these projects must be authorized and, according to the proposed definition in the consultation document, they would be considered industrial activities. An inconsistency therefore exists between the proposed definition and existing mechanisms under the JBNQA and the *Environment Quality Act*.

¹¹ KEAC position paper on Bill No. 14, August 2011.

¹² Consultation document, p. 47.

By way of a second example: In territory governed by agreement, some mineral exploration projects are considered by the MDDEP to be subject to the northern environmental assessment procedure, requiring authorization according to Chapter II of the *Environment Quality Act*. This type of activity will therefore automatically fall into the category of industrial development since the MDDEP considers such projects to have significant impacts on the natural and social environments.

As well, it is stated in the consultation document that mineral exploration work “whose level of intensity has no significant impact on biodiversity”¹³ would be considered non-industrial activity and could therefore be carried out in set-aside areas. The KEAC does not support this statement. First, the consultation document should have stated “no significant impact on the natural and social environments”, rather than “on the biodiversity” since it is difficult to assess the real impacts of a single project on biodiversity. Secondly, the KEAC would like to know how and who will determine that the impacts of a mineral exploration project, which is exempt from the environmental assessment procedure, are significant or not. The KEAC is concerned about the difficulty posed by the assessment of the cumulative impacts of mineral-exploration activities that are exempt from the Northern environmental assessment procedure. Such activities as well as “knowledge acquisition activities”¹⁴ may have significant and long-term environmental impacts, in particular in such a fragile Northern territory where regeneration is so slow. In the opinion of the KEAC, most mineral exploration projects, except for those identified in Schedule B of the *Environment Quality Act*¹⁵, must be considered industrial development due to their harmful effects on the biophysical environment, especially in Nunavik. These activities make it subsequently impossible to designate lands as protected areas or use them for tourism, outdoor activities, as well as cultural and bio-food development.

¹³ Consultation document, p. 47.

¹⁴ Consultation document, p. 47.

¹⁵ Schedule B of the *Environment Quality Act* exempts from the Northern environmental assessment procedure “all testing, preliminary investigation, research, experiments outside the plant, aerial or ground reconnaissance work and survey or technical survey works prior to any project”.

The consultation document also specifies that the protected areas of Plan Nord lands will be free of “industrial extractive activities” as defined by the International Union for Conservation of Nature. The KEAC supports this orientation. Notwithstanding, many uncertainties persist regarding the type of industrial activities that could be carried out in areas “set aside for conservation or non-industrial activities”, which is to say areas not part of current protected area categories, but part of the 50% of protected Plan Nord lands.

Finally, the KEAC considers that the definition of industrial activities must be reviewed and harmonized with existing development categories under the JBNQA and the *Environment Quality Act*, and a distinction must be made between projects with major negative impacts on the natural and social environments, those with minor negative impacts, and those with positive impacts on the environment that require authorization pursuant to the *Environment Quality Act* (example: shoreline restoration projects). The KEAC also recommends that this definition be strengthened to take account of land-use procedures as well as KRG zoning by-laws and orientations. In this context, it will also be important to clearly define the notion of “non-industrial activity”.

CONCLUSION

The KEAC welcomes the goal to protect 50% of Plan Nord lands for purposes other than industrial activities by 2035. Notwithstanding, the KEAC considers that the set targets and timetables may be improved, in particular regarding protected areas in Nunavik. Given its fragile nature, its unique characteristics and the rapid upheavals currently taking place, the KEAC considers that the target for the protected-area network must instead be set at 20% of Nunavik by 2015. Moreover, given the current state of knowledge and to provide adequate environmental and Inuit social protection, it is desirable that the government commit in particular for Nunavik to a protected-area network coverage objective of more than 20% by 2020.

The KEAC has questions about the creation and effectiveness of *areas of interest for conservation and non-industrial development*, a new conservation and protection designation. The KEAC has noted that JBNQA category II lands are already well defined and could play a beneficial role in the government's protection plan.

The KEAC believes that the government must focus on the existing *Master Plan for Land Use in the Kativik Region* and the future *Regional Plan for the Integrated Development of Resources and the Territory* to identify the lands in Nunavik to be designated for conservation and development. The KEAC would like the calculations for the 50% of lands to be dedicated for conservation to be carried out quickly and with consideration for regional planning mechanisms.

The KEAC considers that the acquisition of knowledge and the identification of high-potential protection areas must be accelerated, taking account in particular of the knowledge possessed by Aboriginal organizations and concerned communities.

In the opinion of the KEAC, an adequate number of untouchable protected areas must be rapidly established on Plan Nord lands and, subsequently, each future development project must be accompanied by a corresponding protection decision or the implementation of a compensation mechanism for the affected communities. For Nunavik, the KEAC is of the opinion that 50% of the territory can be identified for protection by 2015.

The notion of industrial activities is critical to the implementation of the government commitment and must be clarified if the proposed protection plan is to receive general approval. The KEAC recommends that this definition be strengthened to take account of the different authorization procedures provided for by the *Environment Quality Act* and the JBNQA, the land-use procedures provided for under the latter, as well as KRG zoning by-laws and orientations. The assessment of industrial-activity sites must take account of the areas affected by these activities in an accurate and transparent manner in consultation with the concerned communities.

SUMMARY: MAIN KEAC RECOMMENDATIONS

- at least 20% of Nunavik must be covered by a protected-area network by 2015;
- increase this target to more than 20% by 2020;
- give “preferential treatment” to category II lands in Québec’s different protection measures for the lands covered by the Plan Nord;
- focus on the existing *Master Plan for Land Use in the Kativik Region* and the future *Regional Plan for the Integrated Development of Resources and the Territory* to identify the lands in Nunavik to be designated for conservation and development;
- the calculations for the 50% of lands to be dedicated for conservation must be carried out hastily with the production of conservation scenarios and with consideration for regional planning mechanisms;
- the acquisition of knowledge and the identification of high-potential protection areas must be accelerated, taking into account the knowledge possessed by Aboriginal organizations;
- over and above the areas already identified for their protected-area potential, mapping must be performed for areas important for environmental protection, biodiversity and the social environment by 2015;
- identify by 2015 a total area equal to 50% of the territory of Nunavik that may be designated as protected areas or as more preliminary and possibly reversible types of areas to be protected;
- calculations for industrial-activity sites must take account of the *actual areas occupied* by the related facilities as well as the *areas affected* by these activities;
- the assessment of industrial-activity sites and the areas affected by these activities must be carried out accurately and transparently in consultation with the concerned communities;
- any proposed industrial development in designated conservation areas, according to the previously established scenarios, must be studied more thoroughly;

- provide a mechanism, open to public participation, that exempts portions of these lands from protection and makes them available for industrial development, in return for the addition of a portion of equivalent lands
- development proponents subject to or exempt from an environmental assessment procedure must take account of the overall impacts of their projects;
- the notion of industrial activities must be harmonized with existing development categories and the necessary government authorizations, and take account of those that exist in the *Environment Quality Act* as well as sections 22 and 23 of the JBNQA, by making a distinction between projects with major negative impacts on the natural and social environments, those with minor negative impacts, and those with positive impacts on the environment that require authorization pursuant to the *Environment Quality Act*;
- strengthen the definition of industrial activity to take account of land-use procedures under the JBNQA as well as KRG zoning by-laws and orientations