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Comité Consultatif de l'environnement Kativik  
Kativik Environmental Advisory Committee

**Position Paper concerning Current and Future  
Transportation Infrastructure Development in Nunavik**

**October 2007**

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## **Mandate of the KEAC**

The Kativik Environmental Advisory Committee (KEAC) was established pursuant to Section 23 of the *James Bay and Northern Québec Agreement* (JBNQA). It is governed by the *Environment Quality Act* (R.S.Q., c. Q-2, EQA) and the *James Bay and Northern Québec Native Claims Settlement Act* (S.C. 1976-1979, c. 32). The KEAC is a consultative body to responsible governments in matters relating 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.

This position paper has been prepared in accordance with paragraphs 23.5.24 to 23.5.26 of the JBNQA which stipulate that:

- The KEAC shall oversee the administration and management of the environmental and social protection regime through the free exchange of views, concerns and information;
- The KEAC shall, with adequate justification, make recommendations to responsible governments concerning legislation, regulations and other appropriate measures related to the environmental and social protection regime;
- The KEAC shall examine environmental and social legislation and regulations relating to the effects of development as well as existing land use regulations and procedures which might directly affect the rights of Native people, and may propose changes where appropriate.

All of the KEAC's decisions and recommendations are transmitted to the governments of Québec and Canada, as well as to the local and regional governments concerned, for information purposes and appropriate action.

This paper sets out the KEAC's position concerning current and future transportation infrastructure development in Nunavik, specifically land and air transportation.

## Context

Situated north of the 55th parallel, Nunavik nurtures a fragile ecosystem that is vulnerable to the growing impacts of climate change and the unrelenting pressure of economic development, spurred by the region's wealth of natural resources. In recent years, intensified mining activities in the region have led to an increase in the construction of access roads to exploration and mining sites. Road infrastructure development in Nunavik however has the potential of causing very serious impacts both on the natural and social environments of the region. In addition to the immediate impacts of road construction on the natural environment, road networks have strategic and continuing impacts on local populations as well as the environment. It is therefore essential that public authorities ensure the proper oversight of mining development.

In February 2005, the KEAC reported on this issue in a position paper submitted to the Minister of Sustainable Development, Environment and Parks in connection with the *Québec Sustainable Development Plan*:

In Nunavik, there are currently no regulations governing the use of heavy equipment on the tundra. Yet the tundra is a very fragile environment, which, once disturbed by the passage of heavy equipment, requires many years to return to its original state. Certain mineral exploration companies are already making use of heavy equipment to carry out work on the Ungava Peninsula. This work is conducted during the summer months and results in the destruction of the integrity of the environment. Such activities need to be regulated in the North given that, at the moment, they do not respect the principles of sustainable development.

In March 2006, following the release of a position paper prepared by the KRG, the KEAC once again studied the issue of road development in Nunavik. In particular, the KRG position paper pointed out that, in 2004, the mining company Noranda-Falconbridge constructed and set out to further improve a road used to access a mineral exploration site, without ever presenting the project to the government departments responsible for road development. The KRG also noted that another mining company, which was not permitted to use the Noranda-Falconbridge "private road network", received four different responses concerning the authorizations required for and the conditions applicable to the use of an existing, but disused, mining road and the construction of an extension needed to access a new mineral exploration site. It seems that the Ministère des Transports (transportation, MTQ), the Ministère des Ressources naturelles et de la Faune (natural resources and wildlife, MRNF), the Ministère du Développement durable, de l'Environnement et des Parcs (sustainable development, environment and parks, MDDEP) and the KRG each hold a different position concerning their road development authorization responsibilities<sup>1</sup>.

Given this context, the KEAC has undertaken to review the legal framework governing road infrastructure development in Nunavik.

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<sup>1</sup> Kativik Regional Government, *Development of Road Infrastructure in Nunavik – Position Paper*, March 2006, p. 7.

## Legal Framework

### a) *James Bay and Northern Québec Agreement and Environment Quality Act*

Schedule 1 of Section 23 of the JBNQA identifies future development projects that are automatically subject to the JBNQA's environmental and social impact assessment and review procedure. Paragraph 6 of Schedule 1 contemplates transportation and indicates that the following types of projects in particular are subject to assessment and review:

- *access roads to and near communities;*
- *road infrastructure for new development;*
- *airports.*

A similar list is also contained in Schedule A of the EQA. Although the wording differs slightly, this list complies with the JBNQA, stipulating that *all access roads to a locality or road network contemplated for a new development* [KEAC underlining] are automatically subject to the environmental and social impact assessment and review procedure contemplated in sections 187 *et sequentes* of the EQA, for the territory situated north of the 55th parallel.

Paragraph 23.1.1 of the JBNQA defines *development* and *development project* as *a project consisting of any work, undertaking, structure, operation or industrial process which might affect the environment or people*. This definition is wide and covers mineral exploration activities and work impacting on the environment and local populations. Consequently, roads needed for mineral exploration, which constitutes a *development* or a *development project* under the JBNQA, are automatically subject to the environmental and social impact assessment and review procedure contemplated in Section 23 of the JBNQA.

Under both the JBNQA and the EQA, *all mining developments* are subject to assessment and review. The only exemption contemplated under the JBNQA is for *air and ground reconnaissance, surveying, mapping and core sampling by drilling*. No exemption is contemplated for the construction of possible access roads for mineral exploration or mining purposes. In this respect, it is important to emphasize that Schedule 1 of Section 23 of the JBNQA is more restrictive than Schedule 1 of Section 22 of the JBNQA, for the territory situated south of the 55th parallel, which excludes mineral exploration in general: *all new major mining operations excluding exploration* [KEAC underlining].

With respect to mineral exploration projects, Schedule A of the EQA clearly reproduces the difference between schedules 1 of sections 22 and 23 of the JBNQA. Specifically, Schedule A of the EQA stipulates that notwithstanding its paragraph a), which automatically subjects all mining developments to assessment and review, *mining exploration projects are not automatically subject to the assessment and review procedure contemplated in sections 153 to 167* [KEAC underlining]. Québec lawmakers therefore intend for this exemption to apply only in the territory situated south of the 55th parallel and not in Nunavik. The territory of Nunavik is contemplated in sections 168 *et sequentes* of the EQA.

It should be recalled that jurisprudence has established that exemptions be interpreted narrowly and not broadly.

Other possible exemptions to the environmental and social impact assessment and review procedure are listed in Schedule 2 of the JBNQA and in Schedule B of the EQA. The following types of projects are clearly exempted: *municipal streets and sidewalks, all maintenance and operation of public and private roads and borrow pits for highway maintenance purposes*. Once again, the construction of all public and private roads is not included in these two lists of exemptions. Such projects are therefore automatically subject to assessment and review.

Furthermore, it is stipulated under section 2.3 of the *Partnership Agreement on Economic and Community Development in Nunavik* (Sanarrutik), signed on April 9, 2002, by the Premier of Québec, the KRG and the Makivik Corporation, that *as contemplated in Schedule 1 of Section 23 of the JBNQA, mining development on the Nunavik territory will be subject to the applicable environmental and social protection regimes*. This provision reaffirms an existing right.

To conclude, the KEAC is of the opinion that the parties to the JBNQA must be careful and ensure compliance with the rights and obligations set out therein. Specifically, the parties are obligated to ensure that, before being undertaken, all road and road infrastructure projects for new development in Nunavik are subject to the environmental and social impact assessment and review procedure contemplated in Section 23. The fact that the JBNQA is guaranteed and protected under section 35 of the *Constitution Act, 1982* further reinforces this obligation.

In addition to being in line with the intentions of the parties to the JBNQA, subjecting mineral exploration and mining road projects to the environmental and social impact assessment and review procedure complies with the guiding principles of Section 23 of the JBNQA and offers many benefits to the population of Nunavik. For example, the procedure guarantees:

- greater dissemination of information about sustainable infrastructure projects among regional public authorities and the region's population;
- a genuine opportunity for Inuit to exercise their right to participate through an active role in the procedure instead of simply being informed of decisions;
- greater transparency and legitimacy for development projects;
- the coherent and consistent development of transportation infrastructure in Nunavik based on best practices;
- a complete assessment of the impacts of development projects, including transportation infrastructure;
- an assessment of the alternatives, location and deployment of each project in order to minimize adverse effects, corrective and mitigation actions, etc.

In addition, other Québec legislation contemplates the construction of mining and forest roads, requiring in certain cases additional authorization. The document prepared by the KRG illustrates the confusion that reigns in this respect.

b) *Mining Act*

The provisions of the *Mining Act*<sup>2</sup> are generally applicable in the territory of Nunavik. The Act stipulates that the lessee or grantee's right to use the surface of land situated within the domain of the State shall be restricted to mining uses, in particular the establishment of tailings yards, workshops, plants and other facilities required for mining activities, and subject to the conditions set out in the lease or concession and in the Act (section 105).

Division VIII of the Act deals specifically with mining roads. It is informative to present here certain provisions:

**242.** The Minister of Transport, with the authorization of the government, may construct, improve or maintain any mining road to facilitate the carrying on of any mining activity. The Minister may cause the work to be done or have the owners of mineral substances or holders of mining rights at whose request the work is done pay part of the costs.

On lands of the domain of the State, the work shall be done without compensation, in particular, to holders of mining rights. On lands of the private domain, the work shall be done only after the property necessary to carry out the proposed works has been acquired by agreement or expropriation.

In Nunavik as elsewhere in Québec, a mining company cannot decide unilaterally to construct a mining road. Rather, the Québec government must authorize the MTQ to construct or cause to be constructed such roads. The Act stipulates that *roads, bridges or other structures are mining roads from the time they are laid out* [KEAC underlining] *until they are closed* (section 243). Consequently, as soon as planning for a mining road is undertaken, government authorization is required and the MTQ must be involved.

In addition, the MTQ may, with the authorization of the government, restrict or prohibit access to a mining road, close or change the location of all or part of a mining road and declare that a mining road is no longer a mining road. The MTQ may also transfer responsibility for the maintenance and repair of all or part of a mining road to a municipality in its territory (sections 246, 247 and 247.1). Since the KRG is considered a municipality pursuant to the *Act respecting Northern Villages and the Kativik Regional Government*, it may rightfully request, as it has done its position paper, this responsibility in its territory<sup>3</sup>.

For his part, the Minister of Natural Resources and Wildlife may exercise the powers vested in the Minister of Transport with respect to mining roads, but only secondary mining roads designated as such by the government (section 248). Notwithstanding, the construction, improvement and maintenance plans and rules for these roads must still be approved by the Minister of Transport. Moreover, the *Mining Act* clearly stipulates that provisions concerning mining roads are the responsibility of the Minister of Transport (section 382).

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<sup>2</sup> *Mining Act*, R.S.Q., c. M-13.1.

<sup>3</sup> *Act respecting Northern Villages and the Kativik Regional Government*, R.S.Q., c. V-6.1, section 244.

Also pursuant to the *Mining Act*, where the MTQ proposes to open mining roads on lands of the domain of the State, it must forward the plans to the Minister of Natural Resources and Wildlife and, if applicable, give notice thereof to any holder of forest rights pursuant to the *Forest Act*<sup>4</sup> (section 244). Where the construction of a mining road requires the cutting of timber on lands of the domain of the State, the MTQ may not proceed without the authorization of the Minister of Natural Resources and Wildlife (section 245).

c) *Forest Act*

Although forests and holders of forests rights are rare in Nunavik, on those lands where forests are present, certain provisions of the *Forest Act* concerning mining road oversight are applicable.

Pursuant to the *Forest Act*, no one may carry on a forest management activity unless he is the holder of a forest management permit issued for that purpose by the Minister of Natural Resources and Wildlife (section 2). Forest management includes [...] the installation and maintenance of infrastructures [...] and all other activities affecting the productivity of a forest area [KEAC underlining] (section 3). A forest management permit may be issued for public utility works or for mining activities (section 10). The Minister of Natural Resources and Wildlife will issue a forest management permit to any holder of mining rights who applies to him therefore in writing for the purposes of the exercise of his rights under the *Mining Act* (section 20). Moreover as indicated above, the *Mining Act* does not provide authorization for holders of mining rights to construct mining roads.

As well, Division IV of the *Forest Act* deals specifically with forest roads. A forest road *is a road constructed or used on land in the domain of the State in view of forest management activities under the Act* (section 31). The same section also stipulates that no person may construct or improve a road other than a forest road in a forest without prior authorization in writing from the Minister regarding the width of the right of way and the destination of the timber harvested in connection with its construction. Similar to the *Mining Act*, the Minister may also, for reasons of public interest, limit or prohibit access to a forest road and transfer responsibility for the maintenance and repair of such a road to a municipality in its territory.

The Act furthermore stipulates that every person who carries on work or causes work to be carried on in a forest must inform the forest fire protection organization responsible for the territory concerned of his intention and obtain a forest protection plan<sup>5</sup>.

Finally under the Act, the government may prescribe, by regulation, in respect of the forests in the domain of the State, rules of forest management regarding the protection of the shores of lakes and watercourses and the location and construction of roads<sup>6</sup>. The government may also prescribe rules governing the movement of persons in a forest and on forest roads and prescribe rules as to the weight and size of vehicles, the trimming of their loads, and road signs<sup>7</sup>.

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<sup>4</sup> *Forest Act*, R.S.Q., c. F-4.1.

<sup>5</sup> *Idem*, section 143.

<sup>6</sup> *Idem*, section 171, subsections 2 and 5.

<sup>7</sup> *Idem*, section 172, subsection 6.

d) *Act respecting the Lands in the Domain of the State*

The *Act respecting the Lands in the Domain of the State* applies to all lands that form part of the domain of the State. These lands are, except as otherwise provided, under the authority of the Minister of Natural Resources and Wildlife<sup>8</sup>. The Act stipulates that every person may enter on lands in the domain of the State, except as prescribed by law or regulation of the government and that the right to enter must be exercised in compliance with the rules prescribed by regulation of the government<sup>9</sup>. Section 54 of the Act stipulates that *no person may erect or maintain a building, installations or works on any land except with authorization of the Minister having authority over that land*. In particular, the following sections specify that:

**55.** No person may construct or improve a road other than a forest or mining road on any land without prior authorization in writing from the Minister, and, in the case of forest land, the authorization prescribed in section 31 of the *Forest Act* (chapter F-4.1).

**56.** The holder of the authorization from the Minister shall comply with the regulations of the government concerning the location, construction, maintenance and use of the road.

The government may also, by regulation, cause such provisions of the *Highway Safety Code* (chapter C-24.2) respecting highway traffic or safety as he indicates to be applicable to them.

**57.** Every road constructed in the domain of the State forms part of it.

The Act also contains provisions concerning the unlawful use and occupation of lands in the domain of the State as well as related penalties<sup>10</sup>.

Generally speaking, the KEAC fears that failure to enforce such provisions in Nunavik will encourage the unlawful use and occupation of lands, including the construction of unauthorized roads.

e) *Legal Definition of a Road*

The JBNQA provides no definition of a road. Furthermore, because Québec laws of general application also do not provide a definition of a road, it is impossible to determine when a “trail” or “path” requires government authorization. Notwithstanding, the MTQ has developed an administrative classification for roads in Québec<sup>11</sup>. For example, “feeder roads” connect rural communities (less than 5000 inhabitants) to urban communities and to ship and air services in remote regions. “Resource access roads” lead exclusively to forestry and mining activities, hydro-

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<sup>8</sup> *Act respecting the Lands in the Domain of the State*, R.S.Q., c. T-8.1, sections 1 and 3.

<sup>9</sup> *Idem*, section 53.

<sup>10</sup> *Idem*, sections 60 to 68.

<sup>11</sup> <http://www1.mtq.gouv.qc.ca/fr/reseau/routes/classes.asp>.

electric installations or other public services, provincially or federally operated recreation and conservation zones, or to borrow pits operated by the MTQ.

According to the *Le petit Larousse*, a road is an “open way, outside of an urban district”. This definition is in line with Paragraph 6 of Schedule 1 of the JBNQA which subjects to assessment and review, as seen above, “access roads to and near communities”.

Certain legislation may be used to enhance our interpretation of the term “road”. The *Highway Safety Code* defines a “public highway” as follows:

4. In this Code, unless the context indicates otherwise,

“**public highway**” means the surface of land or of a structure, the maintenance of which is entrusted to a municipality, a government or one of its agencies, over part of which one or more roadways open to public vehicular traffic and, where such is the case, one or more cycle lanes are laid out, except

- 1) highways under the administration of or maintained by the MRNF or the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation;
- 2) highways under construction or repair, but only with respect to vehicles assigned to the construction or repair;
- 3) highways which the government determines, under section 5.2, as being exempt from the application of this Code;

As well, section 4 of the *Act respecting Roads* stipulates that:

“Road”.

4. For the purposes of this Act, a road includes its infrastructure and all the works and installations needed for its improvement and management.

A road therefore possesses infrastructure and works, which means that the definition of a road cannot simply be the repeated passing of vehicles at the same place. On the other hand, we learn that borrow pits used for the construction of a road are part of that road’s works.

For its part, the *Act respecting Owners, Operators and Drivers of Heavy Vehicles* stipulates that:

Land occupied by shopping centres and other land where public traffic is allowed [KEAC underlining] shall be considered to be a road open to public vehicular traffic<sup>12</sup>.

The Québec Court of Appeal has also ruled that a road located on private property, if it leads to a public highway and is used by the public, is a “public road” as defined under

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<sup>12</sup> *Act respecting Owners, Operators and Drivers of Heavy Vehicles*, section 1.

article 997 of the *Civil Code of Québec*. In the Court’s opinion “the term ‘public’ does not refer to the right of way, but rather to its use” [translation]<sup>13</sup>.

Consequently, as the law now stands in Nunavik, it seems that any serviced roadway that provides access to and near communities and over which the public and road vehicles are authorized to pass may be considered as a road subject to the environmental and social impact assessment and review procedure contemplated in Section 23 of the JBNQA.

*f) Legal Framework for Roads on Category I Lands*

In light of current road infrastructure development in Nunavik, the question must also be asked if roads constructed on Category I lands should be assessed and reviewed. Section 7 of the JBNQA sets out the land regime applicable to the Inuit. The provisions of this section are furthermore reproduced in the *Act respecting the Land Regime in the James Bay and New Québec Territories*<sup>14</sup>. Accordingly, title to the lands identified as Category I is held by the Inuit landholding corporations (paragraph 7.1.3 of the JBNQA) although they remain under provincial jurisdiction (paragraph 7.1.5 of the JBNQA). The JBNQA stipulates that:

Main roads within Category I lands shall be Category III lands. Other existing roads within the Inuit Communities, as well as branch roads within Category I lands and leading to the Inuit communities, shall be Category I lands, but the general public shall be granted access over such roads.

The areas covered by existing landing strips, airport installations, hydroplane bases and maritime structures within Category I lands are excluded from Category I lands and shall be Category III lands<sup>15</sup>.

The JBNQA stipulates that the right of access to Category III lands shall be in accordance with legislation and regulations concerning public lands (paragraph 7.3.1) and that Category I lands are subject to public servitudes established by the Québec government for infrastructure such as roads, bridges and airports (paragraph 7.1.10). The JBNQA also stipulates that, except as otherwise provided, Québec laws and regulations of general application shall govern access to Category I lands and, more specifically, that the general public will have access to all roads, arteries, airports, bridges, public hydroplane bases, wharves, harbours, etc. (paragraph 7.1.16).

Consequently, despite the fact that the ownership regime is different than that for lands of the domain of the State, no provision of the JBNQA stipulates that road construction on Category I lands does not require the various related prior authorizations. *Access roads to and near communities* constructed on Category I lands are subject to the environmental and social impact assessment and review procedure contemplated in Section 23 of the JBNQA. Notwithstanding, roads constructed within the Northern villages are exempt from assessment and review although they remain subject to all related regulations adopted by the proper authorities.

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<sup>13</sup> *Whitworth c. Martin et al.*, C.A., Montreal, no 500-09-001136-902 (450-05-000550-885), September 14 1995, jj. Baudouin, Robert and Biron, p. 6.

<sup>14</sup> *Act respecting the Land Regime in the James Bay and New Québec Territories*, R.S.Q., c. R-13.1.

<sup>15</sup> *James Bay and Northern Québec Agreement*, paragraph 7.1.9.

g) *Legal Framework for Borrow Pits*

Paragraph 2 of Schedule 1 of Section 23 of the JBNQA automatically subjects to assessment and review *the siting and operation of major sand and gravel pits and quarries*. It may be noted that Schedule A of the EQA is slightly different, subjecting to assessment and review *all borrow, sand and gravel pits and quarries, with areas of or over 3 hectares*. Notwithstanding, Schedule 2 of Section 23 of the JBNQA exempts from assessment and review *the extraction and handling of soapstone, sand, gravel, copper, timber for personal and community use* as well as *borrow pits for highway maintenance purposes* [KEAC underlining]. Consequently, a borrow pit of over 3 hectares used for road construction should be subject to assessment and review, similar to the road construction project itself. Moreover, the fact that borrow pits are subject to assessment and review is in line with the approach prescribed for other major projects.

In addition, the JBNQA stipulates that on Category I lands the Inuit landholding corporations must obtain from the MRNF, for personal and community projects, permits for the use of gravel and other similar materials generally used for earthworks and general construction, and that the MRNF may not withhold such permits provided that all the regulations are observed. Moreover, the duties provided for under any applicable provincial legislation shall not be collected<sup>16</sup>. This provision is reproduced under section 148 of the *Act respecting the Land Regime in the James Bay and New Québec Territories*. With respect to Category II and III lands, these duties must be paid and the permits obtained.

This overview of the legal framework applicable to new road infrastructure development in Nunavik demonstrates that road construction is initially subject to the environmental and social impact assessment and review procedure contemplated in Section 23 of the JBNQA. Subsequently, with respect to mining, forest and other types of roads to be constructed on lands of the domain of the State, further government authorization is also necessary and the applicable standards must be followed. It seems highly unacceptable, even unlawful, that a company, or any public or private body, can plan, construct or extend a road in Nunavik, without subjecting the project to the assessment and review procedure contemplated in Section 23, without informing the responsible Québec government departments and without obtaining the required permits. The parties to the JBNQA must ensure that such a situation is not again allowed to occur.

h) *Legal Framework for Landing Strip Construction*

Paragraph 6 of Schedule 1 of Section 23 of the JBNQA automatically subjects airport construction to the environmental and social impact assessment and review procedure contemplated in Section 23. It would appear that the term *airport* covers all facilities related to air transportation, including all public and private “landing strips” in Nunavik.

The JBNQA also stipulates that the areas covered by existing landing strips, airport installations, hydroplane bases and maritime structures within Category I lands are excluded from Category I lands and shall be Category III lands<sup>17</sup>. It may be recalled here that the Northern

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<sup>16</sup> *James Bay and Northern Québec Agreement*, paragraph 7.1.15 b.

<sup>17</sup> *Idem*, paragraph 7.1.9.

villages may make by-laws “to establish, maintain and regulate airports or airstrips for airplanes or other aircraft”<sup>18</sup>. For its part, the KRG has similar powers in any part of Nunavik that is not organized as a municipality. Notwithstanding, by-laws adopted by the KRG, when it acts as a municipality, only come into force upon approval by the Minister<sup>19</sup>.

### **Tentative Solutions and Recommendations**

Certain tentative solutions proposed in the KRG position paper entitled *Development of Road Infrastructure in Nunavik* are discussed below.

The existing legal framework regarding roads in Nunavik is relatively clear and the confusion that currently exists is incomprehensible. Under the JBNQA, all road, airport, as well as major borrow, sand and gravel pit projects are subject to the environmental and social impact assessment and review procedure contemplated in Section 23 of the JBNQA. Only sand and gravel extraction for personal and community use, as well as borrow pits for road maintenance purposes are exempt from the assessment and review procedure. The KEAC is of the opinion that this requirement is compliant with the guiding principles of Section 23 of the JBNQA (paragraph 23.2.4). To ensure the proper application of the environmental and social protection regime in Nunavik, the KEAC submits to the parties of the JBNQA the following recommendations.

**RECOMMENDATION no. 1: Pursuant to Schedule 1 of Section 23 of the JBNQA, the parties should subject all new road and road infrastructure projects in Nunavik to the environmental and social impact assessment and review procedure.**

Further to the existing legal framework, all road construction projects in Nunavik and near communities or all development projects that could impact on the environment or local populations are automatically subject to the environmental and social impact assessment and review procedure contemplated in Section 23 of the JBNQA.

**RECOMMENDATION no. 2: Pursuant to Schedule 1 of Section 23 of the JBNQA, the parties should automatically subject all private and public landing strip projects in Nunavik to the environmental and social impact assessment and review procedure.**

Further to the existing legal framework, all airport construction projects in Nunavik are automatically subject to the environmental and social impact assessment and review procedure contemplated in Section 23 of the JBNQA. Landing strips must be considered as airports.

**RECOMMENDATION no. 3: To eliminate multiple interpretations of Schedule 1 of Section 23 of the JBNQA, the parties should jointly establish definitions for the terms “road” and “airport”.**

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<sup>18</sup> *Act respecting Northern Villages and the Kativik Regional Government*, section 201, subsection 9.

<sup>19</sup> *Idem*, section 244.

**RECOMMENDATION no. 4: Regarding road maintenance and repairs outside of the 14 Northern villages of Nunavik, the parties should study the request made by the KRG to have these activities placed under its responsibility and to be provided with an associated resource envelope.**

In its position paper, the KRG proposes that its Transportation Department be made responsible for the maintenance and repair of roads in the region. The KEAC feels that this solution deserves further study. The *Mining Act*, the *Forest Act* and the *Act respecting the Lands in the Domain of the State* permit the transfer of these responsibilities from the Minister responsible to a municipality. The *Act respecting Roads* also provides for such a transfer of these responsibilities for roads normally managed by the Minister of Transport<sup>20</sup>. Pursuant to the *Act respecting Northern Villages and the Kativik Regional Government*, the KRG is a municipality. Moreover, if the KRG were to be given a road maintenance and repair mandate, because it is already based in Nunavik, the low level of MTQ and MRNF personnel in the region would be mitigated, facilitating future inspections. Such a transfer of responsibilities is also consistent with the Québec government's current policy of regionalization and decentralization. Of course, any such transfer of responsibilities would require an associated resource envelope.

**RECOMMENDATION no. 5: The parties should study the solution of winter road use and standardize related practices.**

The KRG position paper suggests that winter roads could be prioritized, especially for exploratory work related to all kinds of industrial development in Nunavik. This solution is appealing and has been applied in other Arctic regions, such as in the Northwest Territories and Alaska. Even though the significant impacts of rapidly appearing changes in the climate are severely reducing the seasonal service life of these roads, the KEAC recommends that this solution be studied more thoroughly and that concerned stakeholders be consulted. If such a solution is to be adopted, related economic incentives and new regulations could be developed.

**RECOMMENDATION no. 6: The parties should bring into effect a regulation concerning the use of heavy equipment on the tundra.**

The KEAC hereby reiterates one of the recommendations contained in its *Position Paper – Québec Sustainable Development Plan* to the effect that a regulation concerning the use of heavy equipment on the tundra should be adopted<sup>21</sup>.

**RECOMMENDATION no. 7: The parties should complete as quickly as possible the MRNF's Land Use Plan for the Lands in the Public Domain and include a section dealing specifically with transportation infrastructure development north of the 55th parallel.**

The KEAC feels that all road networks situated on public lands should be considered public infrastructure, in Nunavik as elsewhere in Québec. The planning and construction of such infrastructure is moreover clearly a government responsibility. The government is responsible for

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<sup>20</sup> *Act respecting Roads*, R.S.Q., c. V-9, section 3.

<sup>21</sup> Kativik Environmental Advisory Committee, *Position Paper – Québec Sustainable Development Plan*, February 2005, p. 11.

limiting the number of roads in areas with more than one user, especially in a fragile ecosystem like that found in Nunavik. As well, the government must enforce the shared use of road infrastructure. Nunavik's natural and social environments can not support a proliferation of wharves, roads and airports for each company interested in the region's natural resources.

In line with the KRG's position paper, the KEAC recommends that the MRNF's future *Land Use Plan for the Lands in the Public Domain* contain a section dealing specifically with transportation infrastructure development north of the 55th parallel. The KEAC further recommends that this essential planning tool be prepared as quickly as possible. The MTQ should be closely involved in the preparation of the north of the 55th section, taking into account known mineral potential as well as future development in the region. The MDDEP should also be involved in the preparation of the *Land Use Plan for the Lands in the Public Domain* to identify various ecological challenges.

**RECOMMENDATION no. 8: The parties should submit the future *Land Use Plan for the Lands in the Public Domain* to a strategic environmental assessment.**

On completion of the *Land Use Plan for the Lands in the Public Domain*, the KEAC recommends that the Plan be subject to a strategic environmental assessment in co-operation with all Nunavik development stakeholders. Such an assessment would provide a comprehensive view of key infrastructure in the region over the long term. As well, public participation which is an essential condition of sustainable development could be ensured, prior to the implementation of specific projects. Transportation infrastructure development often exacerbates conflicts between different land uses in a given area. A strategic environmental assessment could help to mitigate such conflict. A strategic environmental assessment might also serve to speed up the subsequent assessment of specific projects since the parties will have already come to an agreement on the overall challenges involved.

This KEAC recommendation is in line with a recommendation made by the James Bay Advisory Committee on the Environment during recent external consultations concerning the new approach to public land use planning<sup>22</sup>. As well, a strategic environmental assessment could foster increased co-operation, co-ordination and information sharing among federal, provincial, regional and local authorities with respect to their respective authorization processes.

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<sup>22</sup> Ministère des Ressources naturelles et de la Faune, *Rapport de la récente consultation externe sur la nouvelle approche d'affectation du territoire public*, March 2005, <http://www.mrn.gouv.qc.ca/publications/territoire/consultation/rapport-consultation-2005.pdf>.

## **Conclusion**

Nunavik is an immense region that possesses enormous development potential. The region has only begun to develop and there is still time to plan so that development is sustainable from an economic, social and environmental viewpoint. Regional development will involve in particular the construction of transportation infrastructure with unavoidable impacts on the region's fragile natural environment and its changing social environment. These impacts will be felt for generations to come because this type of infrastructure is strategic to development.

The KEAC feels that transportation infrastructure development is a major challenge that requires the urgent attention of all the parties to the JBNQA. The concerns raised by the KRG in its position paper regarding the unregulated development of a transportation network and the confusion that reigns among the various responsible government departments is disturbing. The KRG position paper should be studied closely. The development of such a large region cannot be left in the hands of private economic interests. Responsibility for development planning in Nunavik lies with the State, in close co-operation with local populations, their representatives and their institutions.

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### Provincial Legislation

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*Forest Act*, R.S.Q., c. F-4.1

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