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Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

October 17, 2024

Renée Plamondon
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Ministère de l'Environnement, de la
Lutte contre les changements climatiques, de la Faune et des Parcs
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Subject: Response to the proposed modernization of the regulatory framework for water environments (permanent regime) and the proposed framework for flood protection works

Dear Ms. Plamondon,

The Kativik Environmental Advisory Committee (KEAC) is the official forum for the governments responsible for the development of laws, regulations and policies concerning environmental and social protection in the territory governed by the James Bay and Northern Quebec Agreement (JBNQA) and located north of the 55th parallel. You will find below the KEAC's comments on the proposed modernization of the regulatory framework for water environments (permanent regime) and on the proposed framework for flood protection works, received by email on June 17.

General Comments

The applicability of the permanent regime in Nunavik needs to be clarified. For example, a number of responsibilities from the permanent regime is attributed to "local municipalities". Land management in Nunavik is governed by the land regime set out in the JBNQA, which provides for a division of municipal responsibilities between northern villages, landholding corporations and the Kativik Regional Government (KRG), depending on the location of the work. In addition, responsibilities under the permanent regime are also assigned to the regional county municipalities (RCMs), which are absent from the Nunavik territory, but many of whose responsibilities are delegated to the KRG by the JBNQA, the Kativik Act and the Act respecting the *Ministère des affaires municipales, des Régions et de l'Occupation du territoire*. To make it

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easier to understand the responsibilities set out in the project to modernize the regulatory framework for water environments, it would be advisable to clarify to whom these responsibilities are assigned.

The methods used to determine the coastline and otherwise delineated flood zones are difficult to apply in northern environments. Additionally, outside the limits of northern villages, no flood zone mapping is available. Since the application of several articles depends on the mapping of flood zones, or on the delimitation of the littoral, it becomes difficult to know how several articles of the proposed modifications to the regulations will apply in Nunavik. The KEAC recommends that the Ministry develop a method for defining flood zones, shorelines and wetlands applicable to Nunavik.

The new framework proposes multiple definitions of complex concepts that are closely related. A written companion guide, available in French, English and ideally Inuktitut and Naskapi, would be desirable to facilitate understanding of the various regulations by schematizing their definitions and explaining their application. The KEAC recommends providing training in northern villages to help inspectors and village employees understand these regulatory changes.

The responsibilities and obligations incumbent on municipalities as part of the modernization project are vast and often require specialized expertise. The KEAC wishes to emphasize that financial and technical support will have to be made available to assist northern villages and the KRG in meeting these new obligations.

The KEAC recognizes the importance of the proposed regulatory changes, particularly in response to the major floods that have affected southern Quebec in recent years. Supervision of activities in hydric, wetland and coastal environments was necessary to respond to climatic hazards, which are unfortunately becoming more and more frequent. Although the proposed framework applies to the whole of Quebec, it does not necessarily meet the needs of the entire territory. In Nunavik, the proposed framework in flood-prone or coastal areas is unlikely to have a significant impact on the quality of life of Nunavimmiut or improve climate risk management in the region. A recent study commissioned by Makivvik to assess the risks associated with climate change in Nunavik¹ points out the main risks to services and infrastructure in the region are related to the increased severity of winter storms and melting permafrost. The KEAC believes that it would be appropriate to adapt regulations to actual risks, and thus propose regulatory changes whose application would be modulated in Nunavik according to the climatic risks that are most significant for the region.

References to Sections 22 and 31.5 of the Environment Quality Act (EQA)

On several occasions, the regulations refer to authorizations issued under Sections 22 and 31.5 of the EQA. Projects north of the 55th parallel are subject to the environmental and social protection regime set out in Section 23 of the JBNQA, and Section 31.5 does not apply in this territory. A number of projects governed

¹ WSP, 2024. Climate change risk and resilience assessment for Nunavik. Project report 221-03896-00 for Makivvik. 131p.

by Section 22 are also listed in Schedule I of the JBNQA, so the latter's assessment regime takes precedence. The KEAC recommends that all Sections referring to authorizations issued under Sections 22 and 31.5 of the EQA also refer to the relevant Sections of the JBNQA, as well as to Section 189 of the EQA.

Comments specific to the Regulation respecting the regulatory scheme applying to activities on the basis of their environmental impact

Article 8, paragraph 8: *"Vegetation management includes the cutting, pruning, removal, planting and seeding of vegetation, but excludes the cultivation of non-aquatic plants and mushrooms and forest management activities;"*

The exclusions mentioned in the definition may lead to confusion. The definition of "forest management" under the Sustainable Forest Development Act is as follows: *"an activity related to the felling and harvesting of timber, the cultivation and operation of a maple grove for maple syrup production, the construction, improvement, repair, maintenance and closure of infrastructures, the carrying out of silvicultural treatments, including reforestation and the use of fire, as well as the control of fires, construction epidemics, the improvement, repair, maintenance and closure of infrastructures, the execution of silvicultural treatments, including reforestation and the use of fire as well as the control of fires, insect epidemics, cryptogamic diseases and competing vegetation, as well as any other activity of the same nature having a tangible effect on the resources of the forest environment"*.

Tree cutting, reforestation and tree seeding are therefore considered vegetation management activities under Section 8, but also excluded from the definition of vegetation management since they are forest management activities under the LADTF. It would be necessary to clarify which activities are considered be part of forest management, and therefore excluded from the definition of vegetation management.

Article 10: *"The present by-law includes the obligation to obtain, from a local municipality, a permit prior to carrying out certain activities in a water environment or on a flood protection structure located on its territory. Any provision of the present by-law which provides for such an obligation shall not apply:*

- (1) activities carried out by a municipality, department or public body;*
- (2) activities eligible for a declaration of conformity under the Regulation respecting the control of activities with respect to their impact on the environment (chapter Q-2, r. 17.1);*
- (3) activities subject to authorization under Section 22 or 31.5 of the Act or to a modification of authorization under Section 30 of the Act.*

The KRG is currently working on a draft regulation on sustainable land use, which will govern land use on unorganized territories north of the 55th parallel. The KEAC recommends that the provisions

of Section 10 not have the effect of preventing the KRG from applying for a permit for activities carried out by public bodies or for activities that are eligible for a declaration of conformity.

Article 8, paragraph 21: *"A building is considered to be a residential building when it includes at least one part used or intended to be used as a private residence by a natural person, whether of a principal or secondary nature, including when this residence is occasionally offered for rent to tourists;"*

In Nunavik, some buildings don't quite fit the definition of a "private residence for an individual". For example, some buildings may be used as public or community lodgings, and many buildings on the territory are hunting camps that may sometimes be used sporadically, and sometimes much more intensively. The KEAC recommends clarifying whether this type of building would be considered a residential building.

Article 19: *"Landscaping work associated with a residential building carried out in a water environment must comply with the following conditions: [...]
4° work carried out in a flood-prone area covers a surface area of no more than 20 m² and embankments are no more than 15 cm high."*

The definition of landscaping is not provided in the by-law, and the supervision of these activities could therefore cause some confusion. The KEAC recommends defining the notion of landscaping.

Article 20: *"The seeding and planting of exotic invasive plant species is prohibited."*

Multiple lists of invasive alien species currently exist. For example, the List of Priority Invasive Alien Floristic Species proposes 18 species, while the Sentinel's List of Invasive Alien Species to Watch includes 22 terrestrial and 22 aquatic floristic species. The KEAC recommends that the list of species referred to in article 20 be clarified.

Article 25: *"The following are prohibited when built into a bank:*

- (1) the siting of a residential building and its accessory structures and buildings;*
- 2° the reconstruction of a residential building and its accessory structures and buildings, with the exception of reconstruction due to a disaster other than flooding, submersion or the movement of a watercourse;*
- (3) a change of use from a non-residential building to a residential building.*

The definitions in article 8 state that the notion of construction includes the siting, replacement, reconstruction, substantial modification and relocation of a building. To ensure consistency between the various articles of the bylaw, the KEAC recommends amending paragraph 1 to include the notion of construction, as defined in paragraph 9 of article 8.

Article 59: *"A municipal permit is required for any activity that may be carried out under a management plan implemented by a by-law made under Section 79.1 of the Act respecting land use planning and development (chapter A-19.1) and approved by the Minister of Municipal Affairs, Regions and Land Occupancy under Section 79.17 of that Act."*

The *Act respecting land use planning and development* does not apply to territories north of the 55th parallel. Territorial planning responsibilities, and therefore the drafting of flood management plans, are instead governed by the *Act respecting Northern Villages and the Kativik Regional Government, as well as the associated agreements*. The KEAC recommends that the applicability of this article to Nunavik be clarified.

Article 86: *"When carried out on a shoreline, the relocation, reconstruction and substantial alteration of a residential building and its accessory structures and buildings must meet the following conditions: [...] 2° unless the initial encroachment does not allow it, a vegetated strip at least 5 m wide, measured from the shoreline, is preserved in a natural state or restored with the aim of re-establishing at least 2 vegetation strata among herbaceous, shrubs or arborescent vegetation"*.

In Section 65, the conditions for revegetation stipulate instead that "it [shall] be carried out using species belonging to the same strata as those affected, adapted to the environment and ideally indigenous". The requirements of Section 65 are much better adapted to the reality of Nunavik, where certain environments do not naturally have two vegetation strata, and where the choice of adapted and indigenous plants is necessary to ensure the sustainability of vegetation recovery. The KEAC considers that article 86 should be reworded to use the same criteria as article 65.

Article 131: *"A regional county municipality may develop a flood risk management plan, which is implemented by a by-law made under Section 79.1 of the Act respecting land use planning and development (chapter A-19.1) and approved by the Minister of Municipal Affairs, Regions and Land Occupancy under Section 79.17 of this Act, in order to provide a development strategy for all or part of its territory in relation to the flood-prone areas present therein, which takes into account territorial particularities and the various activities carried out on the territory, aims at better management of land use and public safety in the long term, and values environmental gains."*

As previously mentioned, there are no regional county municipalities in Nunavik, and the *Act respecting land use planning and development* does not apply north of the 55th parallel. The KEAC recommend clarifying the applicability of this article in Nunavik.

Article 148: *"Every local municipality and every regional county municipality must keep a register of municipal permits issued for activities in water environments, specifying for each permit: [...]"*

4° the batch number where the activity is performed;".

The terms "local municipality" and "regional county municipality" are confusing in Nunavik, since the territory is managed by northern villages and the KRG. It would therefore be necessary to clarify whether the obligation set out in article 148 applies to these bodies. In addition, the use of lot numbers is not adapted to the reality of Nunavik. Vacant or undeveloped lots do not have lot numbers, and neither do many developed lots. In many cases, lot numbers are even assigned to land after it has been built. The requirement in paragraph 4 should therefore be amended to allow for another method of locating activities subject to a permit.

Chapter 6: All articles concerning sanctions against municipalities.

The requirements in terms of archiving, publication, communication, registers and deadlines represent a major burden for municipalities, which do not necessarily have the human and material resources to meet the Ministry's requirements. The KEAC recommends that the Ministry provide financial and material support, as well as adequate training, to help municipalities and northern villages meet these new requirements.

Specific comments on proposed amendments to the Regulation to amend the Regulation respecting the supervision of activities with respect to their impact on the environment.

165.1, paragraph 3: *"the construction of infrastructure, work, building or equipment includes its siting, which includes its conversion, as well as its replacement, reconstruction, substantial modification, relocation and dismantling;"*.

In the Regulation respecting the supervision of activities under the responsibility of municipalities carried out in water environments and on flood protection works, the definition of "construction" excludes the notion of dismantling, which is defined independently. The KEAC recommends that the definitions used be consistent.

Article 313, paragraphs 15, 16, 18

The definitions in paragraphs 15, 16 and 18 of article 313 differ from the definitions in paragraphs 3, 4 and 6 of article 165.1, which governs the same activities. The KEAC recommends that the definitions used in these two Sections be consistent with each other.

Specific comments on proposed amendments to the Regulation respecting activities in wetlands, water bodies and sensitive areas (RAMHHS)

Article 35: *When carried out by a municipality, government department or public agency, shoreline access in a water environment must comply with the following conditions:*

[...]

3° if there is already a shoreline access on the lot in question, the work does not have the effect of adding another shoreline access on the same lot;

In Nunavik, the vast majority of the territory is not organized into lots. The KEAC recommend clarifying the application of Section 35 in areas where lots are not delimited, or in public territory.

Article 40: *“The construction of a surface water extraction facility in a flood zone must be carried out in such a way that the components of the facility are located below the surface of the ground, for the part located outside the littoral zone, or temporarily deposited on the surface. For the purposes of this article, reference to a flood zone includes any wetland or water environment present therein.”*

In Nunavik, permafrost makes it difficult to bury pipelines underground in many areas, including villages that draw surface water for their water treatment plants. It would therefore be necessary to provide a different framework for sites located on permafrost, or on soils presenting other burial constraints.

Specific Comments on the Proposed Amendments to the Flood Control Regulations

Article 4: *“For the purposes of this chapter, a local municipality may enter into an agreement with any municipality within the meaning of the Environment Quality Act (chapter Q-2), hereinafter referred to as the “Act”, to have the latter carry out the required study, in compliance with the applicable law. If such an agreement is reached, notice of it must be sent to the Minister.*

In Nunavik, the term "municipality" can refer to both the northern villages and the KRG, depending on the sector in question. The KEAC recommends that terms that are ambiguous in the Nunavik context be clarified in regulatory texts to facilitate their application in northern territory.

Chapter V, Section I, articles 53 to 58

The KEAC points out that there is currently no flood protection structures in place in Nunavik. However, the obligations of local municipalities under Sections 53 to 58 require substantial material and human resources, as well as sometimes specialized expertise. The KEAC stresses that these resources are difficult to obtain in the North, and that material, financial and technical support from

the MELCCFP will be required to ensure the application of these articles in Nunavik, should the situation ever require it.

Conclusion

The KEAC wishes to emphasize the importance of considering the specific Nunavik context when making regulatory changes. Northern regions face unique challenges and a unique territorial management regime, requiring special considerations. Incorporating these specific features into the descriptions and various Sections of the regulations will ensure their applicability in a northern context and simplify the tasks of local and regional stakeholders.

The KEAC encourages the Ministry to hold discussions with northern villages and the KRG to ensure that regulations are adapted to northern realities.

Best regards,



André-Anne Gagnon
Chairperson, KEAC