



CREE
DEVELOPMENT
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LA GRANDE ALLIANCE

PRE-FEASIBILITY STUDY – PHASES II & III – TRANSPORTATION INFRASTRUCTURE

TECHNICAL NOTE 2 **LEGAL AND REGULATORY CONTEXT**

FINAL VERSION

DATE: MARCH 25, 2024

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EXECUTIVE SUMMARY

The purpose of this Technical Note 2 is to present the legal and regulatory context applicable to the territory of Phases II and III of La Grande Alliance proposed transportation infrastructure is defined by the James Bay and Northern Quebec Agreement (JBNQA) (sections 22 and 23), which specifies the environmental and social evaluation process, specifically to protect the environment as well as the natural resources culturally valued by the Cree and Inuit people, their societies, and communities in relation to development activities affecting the territory. The land regime is a determining element of land use. It provides for the division of the territory into Category I, II and III lands. The management of the State's domain in the James Bay territory stems from the application of the Agreement and determines the applicable regulations.

If the proposed infrastructures (all or separately) are deemed valuable by the communities, then the project would, in the next stage, be subject to the environmental assessment procedures set out in the provincial *Environment Quality Act* (EQA) and those set out in the federal *Impact Assessment Act* (IAA). In fact, the environmental and social impact assessment procedure responds to the premises of the JBNQA (sections 22 and 23) and the EQA at the provincial level, while the impact assessment process at the federal level responds to those of the EIA in terms of federal jurisdiction. Although the two procedures are similar, there are specific features to each.

In addition to the environmental assessment, provincial laws and regulations require authorizations and permits for the disturbance of wetlands and waterways, threatened or vulnerable species, wildlife habitats, work in State-owned forests or interventions in protected areas. Several of the applicable regulations also dictate the standards to be respected. The same applies to laws and regulations under federal jurisdiction. They apply to endangered species, fish and fish habitat, migratory birds, and the protection of the navigable character of water bodies or rivers.

The simultaneous application of federal and provincial environmental procedures in the territory of Eeyou Istchee - James Bay for transportation infrastructure projects complicates project planning and extends the time required for environmental impact assessment and permits procedures. In addition, the components are part of various territorial realities and involve the necessary participation and consideration of Cree, Inuit and non-Indigenous communities. In this regard, the design of the components must, from the outset, consider this diversity by respecting all territorial realities and minimize the loss of natural areas, wildlife and plant species, or fish habitat.

LIST OF ABBREVIATIONS AND ACRONYMS

ABBREVIATIONS/ ACRONYMS	DEFINITION
BDH	Billy-Diamond Highway
COMEV	Environmental and Social Evaluating Committee
COMEX	Review Committee
DFO	Fisheries and Oceans Canada
EIJBRG	Eeyou Istchee James Bay Regional Government
EQA	Environment Quality Act
IAAC	Impact Assessment Agency of Canada
JBACE	James Bay Advisory Committee on the Environment
JBNQA	James Bay and Northern Quebec Agreement
KEQC	Kativik Environmental Quality Commission
MELCC	Ministère de l'Environnement et de la Lutte contre les changements climatiques
MERN	Ministère de l'Énergie et des Ressources naturelles ¹
MFFP	Ministère des Forêts, de la Faune et des Parcs ¹
NEQA	Northeastern Quebec Agreement

¹ The Departments' names are the ones mentioned in the legislative enactments and not their actual names

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1 SPECIFIC TO EYYOU-ISTCHEE JAMES BAY TERRITORY

The Nord-du-Québec administrative region, which includes Nunavik and Eeyou Istchee Baie-James, includes towns, northern villages, Cree, Inuit and Naskapi villages, and lands reserved for Indigenous people. Different regulatory terms and conditions apply to the territories in the region.

1.1 JAMES BAY AND NORTHERN QUEBEC AGREEMENT (JBNQA)

Under the JBNQA, the territorial regime is a deciding factor in land utilization. It provides for the division of the territory into Category I, II and III lands. Category I lands are reserved for the exclusive use of the Crees. They may be used for residential, community, commercial, industrial, or other purposes. In addition, the Crees have exclusive hunting, fishing, and trapping rights there. Category II lands are contiguous to Category I lands. They are part of the Québec public domain. These are lands where the Crees have exclusive hunting, fishing, and trapping rights. Category III lands represent all the lands in the territory covered by the Agreement that are not included in these Category I and II lands. In addition, on Category III lands, the Crees have the right to hunt, fish and trap without a license and without a bag limit at any time, subject to the principle of conservation (COMEX, 2022a).

Section 22 of the JBNQA defines the natural and social environment protection regime of the Cree-Eeyouch population and communities and their heritage, as well as their economy, with respect to development activities affecting the James Bay territory (now Eeyou Istchee - James Bay). Chapter 23 defines the same protection regime with respect to the Inuit territory (Nunavik) north of the 55th parallel.

The application of the JBNQA also introduces the social and environmental assessment process aimed at the privileged participation of communities in the protection of their rights and guarantees, notably through the consultations and representations provided for.

With the provisions of the Northeastern Quebec Agreement (NEQA), an environmental protection regime is also applicable to the Naskapi territory (including the Moinier region) while also ensuring community participation in the environmental assessment process for projects.

1.2 STATE PROPERTY

Depending on the applicable territorial regime, Category II and III lands fall under the public domain of the Quebec government. Thus, the Government of Québec manages the development of public land by allocating land rights for various projects while ensuring the diversity of uses, compliance with applicable laws and regulations and territorial planning. To this end, the *Ministère de l'Énergie et des Ressources naturelles* (MERN) aims to ensure the management and support the development of natural resources and, more broadly, of the territory of Québec in a sustainable development perspective. As such, it participates in the development of the territory and the management of its natural resources. On Category III lands, the mining rights belong to the provincial government.

The territory also includes state forests under the responsibility of the *Ministère des Forêts, de la Faune et des Parcs* (MFFP).

For each of categories II and III, a few elements differ. Category II lands (for the exclusive benefit of Indigenous people for fishing, hunting and trapping) may be subject to development projects, but if so, the affected parcels will be subject to expansion, compensation or indemnification. As for the Category III lands, although hunting and fishing are permitted for both Indigenous and non-Indigenous people, certain wildlife species are reserved for Indigenous hunting and fishing activities. In addition, the Crees have exclusive trapping rights for furbearers.

1.3 THE EYYOU ISTCHEE JAMES BAY REGIONAL GOVERNMENT (EIJBRG)

The Eeyou Istchee James Bay Regional Government (EIJBRG) is the only regional government in Quebec. It includes nine Cree communities in Northern Quebec (Waswanipi, Oujé-bougoumou, Mistissini, Nemaska, Waskaganish, Eastmain, Wemindji, Chisasibi and Whapmagoostui), Washaw-Sibi Association, four Jamesian municipalities (Chibougamau, Chapais, Lebel-sur-Quévillon and Matagami) and three Jamesian communities (Valcanton, Radisson and Villebois). This provision was introduced with the *Act establishing the Eeyou Istchee Baie-James Regional Government*, which was passed and assented to in June 2013. As such, the EIJBRG can also declare its jurisdiction as a regional county municipality (RCM) (EIJBRG, 2022).

The EIJBRG has adopted the planning regulations applicable to its territory of intervention, i.e., the territory other than Category I and II lands as designated by the *Act respecting the land regime in the James Bay and New Québec territories* (chapter R-13.1). This regulation indicates the preferred vocations for the various parts of the Category III territory, such as housing, vacation, businesses and services, recreation and leisure, public and institutional, agriculture, forest, resources and conservation. With its application, the preferred uses of each of these zones are defined while indicating the standards to be considered for these uses (EIJBRG, 2020).

2 GENERAL REGULATIONS

2.1 ENVIRONMENTAL ASSESSMENT

2.1.1 ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT PROCEDURE

As previously mentioned, Sections 22 (Cree territory) and 23 (Inuk territory) of the JBNQA define the environmental and social protection regime for the Cree and Inuit people, their societies and communities, and their economy in relation to development activities affecting the territory. These provisions are also included in the *Environment Quality Act* (Chapter Q-2) (EQA), which deals specifically with the provisions applicable to the James Bay and Northern Québec region.

Environmental advisory committees

In addition, the Agreement allowed for the establishment of two environmental advisory committees, the JBACE² and the Kativik Environmental Advisory Committee (KEAC)³.

Furthermore, the JBACE (2022), as a tripartite committee, supervises and makes recommendations to the Governments of Quebec and Canada, the Cree Nation Government, Cree band councils and municipalities during the development of laws and regulations concerning the protection of the natural and social environment on the territory governed by the James Bay and Northern Quebec Agreement (JBNQA). The organization has the mandate to monitor and propose changes to the environmental protection regime and the application of Section 22 of the JBNQA while providing strategic advice and support when requested by the Evaluation Committee (COMEV)⁴.

The KEAC (2023), also a tripartite committee, acts as an advisory body to the governments of Québec and Canada, the Kativik Regional Government, the northern villages and, when applicable, the Naskapi Nation of Kawawachikamach in the application of laws and regulations pertaining to the environmental and social protection regime and the application and administration of the regime under Section 23 of the JBNQA. It also has the mandate to examine the mechanisms and processes for the assessment and review of environmental and social impacts.

Provisions

The agreement provides for different environmental assessment procedures for projects located south and north of the 55th parallel. They also vary in terms of the committees or panels to which projects are referred and whether they are provincial or federal in nature. Despite these different procedures, the process remains the same.

The provisions of the JBNQA, which are reproduced in the EQA (Schedules A and B), determine which projects are subject to the environmental and social impact assessment and review procedure and which are exempt. In this respect, road, port and railway infrastructure projects are subject to the procedure.

In the event that projects do not appear on either of these lists (Annex A and B), they are considered to be in a grey zone. These projects must therefore be submitted to the designated JBACE administrator. The administrator will then make a final decision on whether or not to subject them to the evaluation and review process, taking into account the recommendations of the two designated environmental assessment agencies.

² James Bay Advisory Committee on the Environment

³ Kativik Environmental Advisory Committee

⁴ Environmental and Social Evaluating Committee

For projects in Cree territory, it is the COMEV that will make recommendations to the administrator as to whether or not they should be subject to the assessment process. For those in Inuk territory, if applicable, it is up to the KEQC to make the decision as to whether or not the projects are subject to the assessment process.

In the event that the assessment process is required, as the case may be, the COMEV or the KEQC⁵ will make a recommendation on the directive regarding the scope of the impact study.

Cree Territory (South of 55th)

Depending on their location on Category I, II or III public lands, projects will be submitted to the appropriate administrator. For Category I lands, the project will be submitted to the Regional Administrator (designated by the Cree Nation Government). For projects on Category II or III lands, and depending on the nature of the project, applications are sent to the Provincial Administrator (Deputy Minister of Environment, Climate Change, Wildlife and Parks Québec) or to the Federal Administrator (Impact Assessment Agency of Canada). The applicable environmental and social protection regime (section 22.2.2) provides for:

- The process where environmental and social laws and regulations, as well as land use regulations can be adopted to reduce the undesirable impacts of development or which affect the territory, the Cree population but also on the wildlife resources of the territory;
- A process for assessing and reviewing the impact on the natural and social environment aimed at reducing the undesirable effects of development on the Indigenous population and on the wildlife resources of the territory;
- If necessary, the protection of the rights and guarantees of the Crees established by the Agreement and in accordance with its provisions, through their consultation, their representativeness and their participation;
- The protection of the rights and guarantees established in favour of the Crees with respect to hunting, fishing and trapping (section 24 of the Agreement);
- The protection of the Crees, their economy and the wildlife resources on which they rely on;
- The right to carry out development projects.

Inuk Territory (North of 55th)

Category I public lands are subject to certain special features. The provisions set out in Articles 7.1.5 and 7.1.6 of the Agreement allow the Inuit community corporations to benefit from the usual rights of ownership. The projects will therefore be submitted to these corporations (including Kuujuarapik). For projects on Category II or III lands, and depending on the nature of the project, applications are sent to the provincial administrator (Deputy Minister of Environment and Climate Change) or to the federal administrator (Canadian Impact Assessment Agency). For the territory north of the 55th parallel, the applicable environmental and social protection regime (section 23.2.2 of the Agreement) includes:

- The process by which environmental and social laws and regulations, as well as land use regulations, can be adopted to reduce undesirable impacts of development or that affect the land, the Inuk population and on wildlife resources;
- An environmental and social impact assessment and review process to reduce undesirable impacts of development on the Inuk population and on wildlife;
- Where necessary, the protection of Inuit rights and guarantees established by the Agreement and in accordance with its provisions, through consultation, representation and greater participation;
- The protection of Inuit hunting, fishing and trapping rights and guarantees (Article 24 of the Agreement);
- The protection of Inuit, their economy and the wildlife resources on which they depend;
- The right to carry out development projects.

⁵ Kativik Environmental Quality Commission

Territoire Naskapi

In addition, section 23.2.2 of the Agreement dealing with the applicable environmental and social protection regime also includes the protection of the rights and interests of the Naskapis of Quebec established under the hunting, fishing and trapping regime referred to in paragraph 15.2.1 of the Northeastern Quebec Agreement and in accordance with its provisions.

In sum, the Grand Alliance infrastructures will certainly be subject to environmental assessment procedures at both the provincial and federal levels, not to mention the regional assessment given the components located on Category I lands, and, where applicable, on Inuk and Naskapi territories.

2.1.2 PROCEDURE

The project includes six components that will be independent of one of the others and could vary in terms of schedule, namely:

Phase II:

- A new railway alignment following, as much as possible, that of the Billy-Diamond Highway (BDH) from km 257 – the Rupert River Bridge, which is the junction point with the railway alignment developed by the Phase I Consultant – to km 544, where the Trans-Taiga Road connects with the BDH;
- Route 167: Upgrading and paving of the section from the Mistissini community's access road to the Stornoway Renard Mine access road (± 255 km);
- Route 167: North extension to connect with the Trans-Taiga Road, on an approximate distance of 125 km.

Phase III:

- A new road corridor connecting Chisasibi community's access road and Whapmagoostui/Kuujjuarapik, over an approximate distance of 175 km;
- A new railway alignment extending from the Phase II railway alignment, and which follows, as much as possible, the feasibility roadway alignment leading to Whapmagoostui/Kuujjuarapik developed in the course of this Study by WSP. The Phase III railway alignment extends over an approximate distance of 225 km.
- A harbour at Whapmagoostui/Kuujjuarapik.

Under the current rules, each of the project components could be subject to an environmental assessment procedure independent of each other. Given the complexity and immensity of this large-scale project, discussions between the competent authorities and the administrations concerned could be relevant at the beginning of the process according to the applicable rules, allowing for the simplification of subsequent steps in the identification of the nature and extent of potential impacts.

The process will also include the comparison and selection of the alternative(s) for carrying out the project or of its components while considering the opinions, reactions and main concerns of individuals, groups and communities.

The desired outcome of a streamlined process will also be reflected in the data collection preceding the environmental assessment, in the commitments made to stakeholders and rights holders. Here again, the streamlined process will allow for the nature and scope of the impacts to be clearly identified beforehand and will only facilitate preliminary discussions with the authorities.

Based on the information gathered during the consultations and negotiations, a decision will be made on which project components will be retained, the delegation of decision-making responsibility, and the conditions under which the projects will be implemented.

The approach is all the more important considering that the process aims for the privileged participation of the Crees in the evaluation and review of projects so that the guiding principles of Section 22 of the Agreement are considered, in particular through the establishment of a consultation and representation mechanism. The process involves a set of authorities and committees with different responsibilities.

The environmental assessment process dictated by the JBNQA, either north or south of 55th parallel, follows five steps:

- The declaration of the project initiator;
- Evaluation by the evaluation committee;
- The preparation of the impact assessment by the promoter;
- Review by the review panel;
- The decision.

Only the evaluation stage by the evaluation committee is limited in time by the EQA. Indeed, the EQA only provides for a period of 30 to 90 days following the submission of the project for the provincial administrator (Deputy Minister of Environment, Climate Change, Wildlife and Parks and Climate Change, Québec) to decide whether or not a project is subject to the assessment procedure. This same deadline is also provided for the publication of guidelines and recommendations for the conduct of impact studies of the project. However, this step can be extended, if necessary, by the Provincial Administrator of the JBNQA).

All other steps in the environmental assessment process (preparation of the impact study, review) have no fixed time frame and may vary in time. For example, the filing of the impact statement may take more than 90 days. In addition, the questions and answers period continue until the designated committees are satisfied with the information provided. Thus, the exchanges between the committees and the proponent can last from a few weeks to several months, even years. The procedure at the provincial level is different from that at the federal level since the latter sets a strict timetable for each step (see section 2.1.3). The *Regulation respecting the environmental and social impact assessment and review procedures applicable to the territory of James Bay and Northern Québec* (EQA, chapter Q-2, r. 25) also specifies the preliminary information required for the process and defines the type of impact study, whether preliminary or detailed.

Any project submitted to the assessment procedure is subject to two distinct phases: an initial assessment phase by COMEV/KEQC and, once the impact study has been submitted, an examination phase by COMEX⁶ and the KEQC.

PROJECT INITIATOR DECLARATION

The process starts with the Project Initiator's Statement, which is essentially the preliminary planning of the project (possible options and technical, economic, environmental, and social aspects). At this stage, a Notice of Intent and preliminary project information must be completed. Table 2-1 presents this information.

This preliminary information form is forwarded to the Evaluation Committee (COMEV) if the project concerns the region south of the 55th parallel (Eeyou-Istchee - James Bay), or to the Kativik Environmental Quality Commission (KEQC) if it concerns the region north of the 55th parallel (Northern Quebec/Nunavik). Both committees will review the preliminary information. For infrastructure projects covered by the environmental and social assessment procedure, they will produce a recommendation on the impact study guidelines to be prepared.

⁶ Review Committee

TECHNICAL NOTE 2 – LEGAL AND REGULATORY CONTEXT

Table 2-1 Preliminary Project Information (Provincial)

INFORMATION	COMMENTS
Identification and contact details of the promoter	Content listed in the <i>Regulation respecting the environmental and social impact assessment and review procedures applicable to the territory of James Bay and Northern Québec</i>
General presentation of the project	
Location of the project and its implementation schedule	
Information and consultation activities with the public, Indigenous communities and land users	
Summary description of the main issues and impacts of the project on the receiving environment	
Greenhouse gas emissions	
Other relevant information	Example: Resolution of the responsible agency; Characteristics of the project; Location map

Source: MELCC, 2022a

EVALUATION COMMITTEE

First, the preliminary assessment of the project will be done by the Evaluation Committee (COMEV). This committee is composed of six representatives, two appointed by the Cree Nation Government, two by the federal authorities and two by the Quebec government (COMEV, 2022).

This committee examines the project notice submitted and prepares guidelines and recommendations to the MELCC in consultation with the community.

These guidelines and recommendations guide the preparation of the impact study and any other preliminary or detailed studies to be submitted for each of the project components. They define the scope of the impact study to be produced, i.e., the environmental elements to be examined by the proponent.

IMPACT ASSESSMENT PREPARATION BY THE PROMOTER

Following the publication of the guidelines by COMEV, the proponent prepares and drafts the impact study and any other preliminary or detailed studies to be filed for each of the project components.

REVIEW COMMITTEE

The Review Committee (COMEX) (2022b) is made up of two representatives appointed by the Cree Nation Government, and three representatives of the Quebec government. The Committee will examine the impact study submitted and will be called upon to make recommendations to the MELCC as to whether the project should be authorized. It may also, if necessary, set the conditions of the authorization or require additional research or studies.

In the case of large projects, this stage could usually involve public consultations, particularly in the communities affected by the project.

The KEQC is responsible for the assessment and review of projects north of the 55th parallel. To this end, it decides whether projects should be subject to the assessment procedure and develops guidelines for the scope of the impact study. It also analyzes impact studies and may hold public consultations with communities affected by a project.

Finally, The Administrator decides on whether or not to authorize a project based on recommendations provided by the review committee.

AUTHORIZATION CERTIFICATE ISSUANCE

Once the impact studies have been assessed, the MELCC either sends the project initiator a certificate of authorization or a written refusal. A favourable decision may be accompanied by conditions that are an integral part of the certificate of authorization. These conditions must therefore be implemented during the course of the project, as stipulated in the conditions. Under the *Act respecting the Land Regime in the James Bay and New Québec Territories* (chapter R-13.1) and considering the provisions regarding Category I lands and the public interest, the Québec government may modify certain conditions imposed by the latter. Moreover, depending on the category of land where the projects are planned, their administration changes. Category I lands are those allocated to Cree communities and therefore managed by their local governments with the support of the Cree Nation Government (CNG). Category II lands are provincial public lands where the CNG is involved in their management. In the event of purposes other than the exclusive hunting and fishing rights granted to the Crees, these lands are replaced or compensated. As for Category III lands, they are also in the public domain of the Quebec State but under the supervision of the EIJBRG. However, developments and activities on Category I and II lands must comply with applicable provincial and federal environmental, social and land use regulations (section 22.4 of the Agreement).

2.1.3 IMPACT ASSESSMENT (FEDERAL)

The implementation of the proposed infrastructure is subject to the federal environmental assessment process under the *Impact Assessment Act* (S.C. 2019, c. 28, s.1) (IAA). Indeed, transportation projects such as a new highway, a new marine terminal and new railway lines are specifically named as designated activities under the *Physical Activities Regulations* (SOR/2019-285) and must undergo an impact assessment. The assessment of these impacts focuses on the adverse environmental effects likely to be generated, based on areas of federal jurisdiction.

The Impact Assessment Agency of Canada (IAAC) conducts the assessment and processes. It determines whether projects require an impact assessment (IAAC, 2022).

The impact assessment process encourages the participation of developers, Indigenous groups, the public and federal authorities. The application of the Act ensures respect for the rights of Indigenous peoples, promotes partnership with them, and involves consideration of Indigenous s knowledge. The objectives of the IAAC are to:

- Promote sustainability;
- Ensure respect for the rights of Indigenous peoples;
- Include environmental, social, health and economic factors;
- Establish a fair, predictable and efficient evaluation process;
- Consider positive and negative effects;
- Include early, inclusive and meaningful public participation;
- Promote partnerships with Indigenous peoples;
- Base decisions on science, Indigenous knowledge and other sources of evidence;
- Assess cumulative effects within a region.

In addition, the *Information and Management of Time Limits Regulations* (SOR/2019-283) specifies the information that the proponent must provide and provides a framework for time management for each stage of the process. The process begins with the filing of the initial project description by the proponent.

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INITIAL PROJECT DESCRIPTION

The information required in the initial description of the designated project consists of the following elements (as per Schedule 1 of the *Information and Management of Time Limits Regulations*):

- General information, including the name of the project, the proponent, the steps taken, the list of Indigenous groups affected, a summary of the issues raised and the results of the mobilization, etc.;
- Information on the project, including the need, list of activities, infrastructure and structures to be included, timetable, alternative solution, etc.;
- Location information, including spatial boundaries of the project, site plans, land titles, land used for traditional purposes, description of the biological and physical environment, brief description of the health, social and economic context of the area, etc.;
- Description of federal, provincial, territorial, Indigenous and municipal participation;
- Potential effects of the project on the following components: fish and fish habitat, aquatic species, migratory birds, environmental effects, impacts on Indigenous peoples, etc.

The impact assessment process involves five steps, with prescribed deadlines (see Table 2-2).

Table 2-2 Stage of the Federal Environmental Assessment (IAA) process

STEP	DESCRIPTION	DEADLINES
Planning	Presentation and initial description of the project to the IAAC	---
	Publication of the initial project description by the IAAC (Consultation and mobilization)	20 to 30 days
	Summary of issues by the IAAC	10 days
	Detailed description of the project including response to the summary of issues by the promoter	30 days
	IAAC's response on the need for an impact assessment	10 to 20 days
	IAAC Guidelines	30 days
	Public consultation on the guidelines	30 days
	Finalization of guidelines and plans	40 days
	Publication of the Notice of Commencement, Guidelines and Final Plans	---
Impact study	Completion of the impact assessment by the promoter	3 years (maximum period)
	Presentation of the impact assessment to the IAAC	
	Public consultation	
	Acceptance of the impact assessment and notice of determination	
Impact assessment	Technical review of the impact assessment	300 days
	Impact assessment report and potential conditions	
	Public consultation	
	Finalize impact assessment report and send to Minister	
Decision-making	Decision by the Minister of the Environment on whether to authorize or refuse a project	30 days
Post decision	Application for regulatory approval	Variable
	Implementation of monitoring programs	

Source: adapted from IAAC, 2022

PLANNING

During the first 80 days of the planning stage, the project will be introduced into the process and issues and concerns arising from the engagement of the relevant Indigenous communities and the public will be identified. Indigenous rights and interests will need to be addressed. Following this engagement, the proponent will produce a detailed project description and may respond to issues and concerns raised by communities and the public within 30 days.

Following this, the IAAC will determine whether an impact assessment is required and will draft project-specific guidelines.

The planning process also aims to achieve the following objectives:

- Identify and plan opportunities for collaboration and cooperation with the authorities;
- Plan for clear and meaningful participation and consultation with Indigenous communities and the public concerned throughout the impact assessment process;
- Clarify to the promoters the anticipated regulatory requirements for the project;
- Adapt guidelines that will clearly identify the studies and information required for the impact assessment.

The adapted impact assessment guidelines provide the detail necessary for the IAAC to determine the scope of the elements to be considered and conduct the assessment.

IMPACT STUDY

The proponent will produce the impact study and submit it to the IAAC, which will determine whether it complies with the guidelines. Following the analysis, and if deemed adequate, the IAAC will accept it and issue a public notice. If the impact study does not comply with the adapted impact study guidelines, the Agency will require the proponent to provide the missing information or revisions. This step will have to be completed within a maximum period of 3 years.

IMPACT ASSESSMENT

At this stage, the IAAC will carry out a technical review of the impact assessment and draft the impact assessment and potential conditions report for the acceptance of the project. Also, at this stage, a public consultation period on the draft impact assessment report and potential conditions is planned.

Once the draft impact assessment and potential conditions report is completed by the IAAC, it is forwarded to the Minister of the Environment.

DECISION

The Minister of the Environment will make the decision to authorize the project, while considering the public interest. The public interest is then based on the impact assessment report and must consider the following elements:

- The project's contribution to sustainability;
- The extent of adverse effects in the federal jurisdiction and the significance of direct or incidental adverse effects;
- Associated mitigation measures;
- The impact on Indigenous groups and the negative effects on their rights;
- The ways in which the effects of the project contribute to or detract from Canada's environmental obligations and commitments to address climate change.

For this purpose, a period of 30 days is determined for the announcement of the decision of the Minister of the Environment.

POST DECISION

At this stage, the proponent applies for regulatory approval for the project activities if required. If so, the project can begin within the timeframe specified in the decision statement. It is also at this stage that the proponent implements mitigation measures and the follow-up program. The proponent is required to comply with the conditions associated with the decision statement.

It is also at this stage that the documentation specific to monitoring and surveillance is published by the IAAC. The IAAC may also set up the environmental monitoring committees and ensure that it promotes, informs, and monitors the implementation of the licensed activities, in accordance with the applicable regulations.

2.2 APPLICABLE REGULATIONS

Once the environmental and social assessment process for the project is completed and the certificate of authorization is issued, the design of the project components and their implementation must comply with applicable provincial and federal regulations. This legislation involves obtaining various permits and authorizations. The applicable legislation governing the project includes several laws, regulations, policies and directives, the main ones of which are listed below.

2.2.1 PROVINCIAL AUTHORITIES

2.2.1.1 ENVIRONMENT QUALITY ACT

AUTHORIZATION

The *Environment Quality Act* and its related regulations prescribe that ministerial authorization be obtained, in particular under Article 22, for work, construction or any other intervention, as well as with the application of the Regulation respecting the regulatory regime applicable to activities with respect to their impact on the environment (chapter Q-2, r.17.1), particularly in wetlands and water bodies. The work that will be necessary in protected areas will also be subject to authorization.

Thus, for certain interventions that will be necessary before the beginning of the work, notably, work in wetlands and waterways, the installation of temporary work camps, the management of residual materials, the management of wastewater and water withdrawal activities, as well as elements related to quarries and sand pits.

Furthermore, within the framework of this Act, the *Regulation respecting the regulatory scheme applying to activities on the basis of their environmental impact* (chapter Q-2, r.17.1) prescribes that ministerial authorization be obtained for activities arising from a project covered by the environmental and social impact assessment and review procedure to the extent that such an activity is subject to ministerial authorization under Section 22.

This regulation also prescribes which activities are subject to a declaration of conformity and which are exempt. To this end, activities covered by a ministerial authorization, a declaration of conformity or an exemption may not begin until the certificate following the environmental and social assessment process has been issued.

In addition, certain activities governed by other laws or regulations are not subject to authorization under Section 22. These include activities governed by the *Regulation respecting the sustainable development of forests in the domain of the State* (chapter A-18.1, r. 0.01), which are exempt from authorization under the EQA, with the exception of those carried out in wetlands and watercourses.

In addition to these exemptions, activities carried out in the territory of an aquatic reserve, a biodiversity reserve or an ecological reserve or in the territory set aside for that purpose under the *Natural Heritage Conservation Act* (chapter C-61.0) are also exempt if they are authorized under that Act.

STANDARDS FRAMEWORK

The *Regulation respecting activities in wetlands, bodies of water and sensitive areas* (chapter Q-2, r. 0.1) prescribes the standards generally applicable to all wetlands and water bodies during work, in particular, but does not apply to activities subject to the *Regulation respecting the sustainable development of forests in the domain of the State* (chapter A-18.1, r. 0.01). Furthermore, with the repeal of the *Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains*, the standards applicable to riverbanks are, as of March 1, 2022, contained in the *Regulation respecting activities in wetlands, bodies of water and sensitive areas* (chapter Q-2, r. 0.1).

2.2.1.2 SUSTAINABLE FOREST DEVELOPMENT ACT

AUTHORIZATION

The *Sustainable Forest Development Act* (chapter A-18.1) applies to forest areas in the domain of the State or to forest areas belonging to private owners or held as owners by an Indigenous landholding corporation referred to in the *Act respecting the land regime in the James Bay and New Québec territories* (chapter R-13.1), to the extent provided for by that Act.

This law aims to provide a framework for activities in public forests and introduces provisions regarding Indigenous communities. Under this Act, the MFFP authorizes forest management activities related to the felling of timber, the construction, improvement, repair, maintenance and closure of infrastructures, the execution of silvicultural treatments, including reforestation, and any other activity having a tangible effect on the forest environment.

STANDARDS FRAMEWORK

Within the boundaries of public forests, forest management standards are contained in the *Regulation respecting the sustainable management of forests in the domain of the State* (chapter A-18.1, r.0.01), for the protection of lakes, watercourses, riparian environments, wetlands, soils and water quality, or for the protection of various resources and sites.

This regulation also controls or prohibits interventions in protected areas and in the habitats of certain wildlife species. These include species designated by the *Act respecting threatened and vulnerable species*, white-tailed deer, bears and caribou.

This is also the case for Indigenous use sites, outfitters, known heritage sites, archaeological sites and other human settlements.

2.2.1.3 ACT RESPECTING THE CONSERVATION AND DEVELOPMENT OF WILDLIFE

The purpose of the *Act respecting the conservation and development of wildlife* (chapter C-61.1) is to conserve wildlife and its habitat, to develop them with a view to sustainable development, and to recognize the right of all persons to hunt, fish and trap in accordance with the law. To this end, it establishes various prohibitions relating to the conservation of wildlife resources as well as various safety standards and sets out the rights and obligations of hunters, fishermen and trappers.

AUTHORIZATION

Interventions in wildlife habitats on government property identified by a plan drawn up by the MFFP may be subject to authorization under the Act respecting the conservation and development of wildlife (chapter C-61-1). It is possible that interventions may also be exempt from authorization, or that they may be subject to a regulatory framework or specific standards. In this regard, the wildlife habitats designated by the *Regulation respecting wildlife habitats* (chapter C-61.1, r.18) are:

- 1 A waterfowl concentration area;
- 2 A white-tailed deer containment area;
- 3 A caribou range south of the 52nd parallel;
- 4 A caribou calving ground north of the 52nd parallel;
- 5 A cliff inhabited by a colony of birds;

- 6 A habitat of a threatened or vulnerable wildlife species;
- 7 Fish habitat;
- 8 Muskrat habitat;
- 9 A heronry;
- 10 An island or peninsula inhabited by a colony of birds;
- 11 A mudflat.

STANDARDS FRAMEWORK

The *Regulation respecting wildlife habitats* (chapter C-61.1, r.18) introduces various standards or conditions for intervention in a habitat. With respect to fish habitat, the construction of culverts or bridges is standardized and must be carried out in accordance with these standards.

2.2.1.4 ACT RESPECTING THREATENED OR VULNERABLE SPECIES

Activities that modify the habitats of a threatened or vulnerable plant species may be subject to authorization by the MELCC under the *Act respecting threatened or vulnerable species* (chapter E-12.01). This Act also allows the Minister of the Environment to impose conditions, such as requiring guarantees or the payment of financial compensation.

The list of threatened or vulnerable species, or species likely to be so designated, is determined by various regulations:

- *Regulation respecting threatened or vulnerable wildlife species and their habitats* (chapter E-12.01, r.2);
- *Regulation respecting threatened or vulnerable plant species and their habitats* (chapter E-12.01, r.3);
- *List of plant and wildlife species which are likely to be designated as threatened or vulnerable* (chapter E12.01, r. 5).

2.2.1.5 NATURAL HERITAGE CONSERVATION ACT

The purpose of the *Natural Heritage Conservation Act* (Chapter C-61.01) is to ensure the conservation of Quebec's natural heritage and the values associated with it. It has made it possible to introduce numerous measures to protect natural environments and provides a framework for the creation of the following protected areas: biodiversity reserve, aquatic reserve, ecological reserve, humanized landscape and nature reserve (MELCCFP, 20223a).

The Act defines the criteria for establishing a protected area (MELCCFP, 2023b) and uses the IUCN definition:

“clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values”

Thus, the protected areas of the territory are designated under this law and allow for the reservation of territory until a legal status of protection is attributed.

In addition, no right, lease, permit or authorization may be granted or issued for the construction of any infrastructure subject to authorization by the Minister responsible for the administration of the *Act respecting the lands in the domain of the State* (chapter T-8.1). However, the setting aside of a territory ends with its designation as a protected area.

In carrying out activities in a protected area, the preservation of its biological character is essential, and conservation takes priority in the case of conflict between different objectives (MELCCFP, 2023b). The authorization regime for interventions in protected areas is also provided for in the Act. To this end, certain activities may be authorized or be considered compatible or incompatible. Thus, the authorization may be subject to conditions determined by the MELCCFP or may be refused.

It is possible to change the status of a protected area, modifying its conservation measures, its boundaries or its designation remains possible under the Act. The Act provides a framework for such procedures, but they require time limits. However, considerations related to the maintenance of ecological functions and environmental characteristics, the public interest or a change in the reasons for the designation of the protected area are criteria considered by the MELCCFP with respect to changes to protected areas. The Act⁷ also introduces the procedure prior to the modification of a protected area and includes mechanisms for public consultation and greater involvement of citizens, local and indigenous communities in the management of protected areas (MELCCFP 2023a).

Such changes to protected areas must be made in accordance with the wishes and interests of local and Indigenous communities. Changes to protected areas should be considered only as a last resort in the event that the public interest clearly warrants it.

In the exceptional case that a protected area is modified, the law also introduces a compensation regime applicable by the MELCC in the event that its total area is diminished. (MELCCFP 2023a). The compensatory measures could include the implementation of other conservation measures for the restoration and creation of environments elsewhere in the territory with the objective of no net loss.

OTHER ACTS AND PROVINCIAL REGULATIONS

Various laws and regulations are related to the components of the territory. These do not interfere with the environmental and social assessment process of the projects, nor with the authorizations, but they do allow for the addition of elements relevant to the understanding of the issues and the socio-environmental reality in which the Grand Alliance projects are situated. These include the following laws and regulations:

- *Act respecting hunting and fishing rights in the James Bay and New Québec territories* (chapter D- 13.1);
- *Act to affirm the collective nature of water resources and to promote better governance of water and associated environments* (Chapter C-6.2);
- *Cultural Heritage Act* (chapter P-9.002);
- *Regulation respecting beaver reserves* (chapter C-61.1, r. 28).

2.2.2 FEDERAL AUTHORITIES

Depending on the areas of federal jurisdiction, different authorizations may be required from the federal authorities in relation to the three laws defined below.

2.2.2.1 SPECIES AT RISK ACT

The *Species at Risk Act* (S.C. 2002, c.29) prohibits killing, harming, harassing, capturing or taking, possessing, collecting, buying, selling or trading an individual of a species listed in Schedule 1 of the Act as extirpated, endangered or threatened. The Act also prohibits damaging or destroying its habitat. Any activity that may affect species listed in Schedule 1 of the Act requires a permit from the Department of the Environment and Climate Change Canada.

As such, the following prerequisites must be met in order to obtain a permit:

- All alternatives that could minimize the negative consequences of the activity for the species have been considered and the best solution is chosen;
- All possible measures will be taken to minimize the negative consequences of the activity for the species, its critical habitat or the residence of these individuals, and;
- The activity will not jeopardize the survival or recovery of the species.

⁷ Amended by the passage of Bill No. 46 (2021, chapter 1): Act to amend the Natural Heritage Conservation Act and other provisions, assented to February 17, 2021

2.2.2.2 FISHERIES ACT

The *Fisheries Act* (R.S.C., 1985, c.F-14) requires that projects avoid serious harm to fish, unless such harm has been authorized by the Minister of Fisheries and Oceans Canada (DFO). This applies to works in or near water bodies where fish are caught in commercial, recreational or Indigenous fisheries. Compliance with the Act is dependent on measures being taken to avoid harm to fish or fish habitat.

Depending on the nature of the work in fish habitat, an application for review may be required by the DFO or an authorization may be required under the Act.

2.2.2.3 MIGRATORY BIRDS CONVENTION ACT, 1994

Under the *Migratory Birds Convention Act, 1994* (S.C. 1994, c. 22), migratory birds, as well as their nests, eggs and colonies, are protected by the *Migratory Birds Regulations* (C.R.C., c. 1035). In order to protect them, the law and its regulations dictate the elements to be considered, including the respect of nesting periods during construction.

2.2.2.4 CANADIAN NAVIGABLE WATERS ACT

The *Canadian Navigable Waters Act* (R.S.C., 1985, c. N-22) protects the public's right to navigation and free passage in navigable waters. The schedule to the Act identifies a list of "navigable waters", including the Arctic Ocean, certain lakes and rivers, and the busiest commercial and recreational waterways in Canada.

Any owner who intends to "construct, place, alter, repair, reconstruct, remove or decommission a work in a waterway" is required to send a "Notice of Work" to the Ministry of Transport. The Ministry of Transport assesses the risk of obstruction to navigation posed by the work. Approval of the work is only given when it has been determined that it is not likely to seriously impede navigation.

2.2.3 MUNICIPAL REGULATIONS

The EIJBRG applies the zoning regulations on Category III public lands. Depending on the interventions required by the project, authorization requests may be necessary for a certificate of compliance and an intervention permit with respect to the regulations of the territory under its jurisdiction.

Depending on the municipal territories of the cities and communities in the territory, certain local regulations may also require permits or authorizations, particularly with regards to urban planning, zoning, and construction.

3 COMPENSATION AND OFFSETTING

Under provincial and federal laws and regulations, compensation may be required for the loss or disturbance of natural components as a result of the project.

3.1 WETLANDS AND WATER ENVIRONMENTS

The compensation regime for the loss of wetlands and water bodies does not apply to the James Bay territory under the *Regulation respecting compensation for adverse effects on wetlands and bodies of water* (chapter Q-2, r. 9.1).

In order to reduce the impacts on the natural environment and wildlife, the mitigation approach (avoidance and minimization) makes it possible to assess the elements in a global and coherent manner, to validate the project concept and its components (MELCC, 2021).

The overall objective of the mitigation sequence is to avoid losses of water environments and to promote the design of projects that minimize impacts on the receiving environment. Attention should be paid to the proximal water environment, but also in the regional context of the catchment areas. The mitigation approach (avoidance and minimization) makes it possible to specify and validate the choice made with regards to the concept that will be retained and proposed.

Avoidance consists of assessing the possibilities for the project to be carried out elsewhere than in wetlands and water bodies. Minimization involves reducing the negative effects of an intervention or project; the implementation of measures makes it possible to further reduce the effects of an intervention on wetlands and water bodies, starting with the design of project implementation techniques and the adaptation of implementation techniques. Compensation is only considered in cases where it is not possible to avoid and minimize impacts on wetlands and water bodies.

Consequently, the mitigation approach aims to avoidance and minimization of impacts in the design of the project while maintaining a perspective of protection and adequate management of the territory.

In addition, the Government of Quebec recognizes and has designated protection zones. In this same perspective, the Cree communities could also want to identify new protected areas that will also have to be considered.

3.2 HUNTING AND TRAPPING ACTIVITIES ON CATEGORY II LANDS

In the event that interventions impact or do not allow Indigenous hunting, fishing and trapping activities located on Category II lands, the JBNQA (Section 5.2.3) provides for the replacement of the affected land or compensation, based on an agreement reached.

3.3 COMPENSATION FOR PROTECTED AREAS

On an exceptional basis and in the event that changes are contemplated in protected areas, compensation measures may be necessary and may include the implementation of other conservation measures for restoration and creation of environments elsewhere on the territory with the objective of no net loss.

3.4 WILDLIFE

The authorizations for interventions in wildlife habitats under the *Act respecting the conservation and development of wildlife* could be accompanied by a financial contribution corresponding to the sums required for the conservation, management and development of a replacement habitat for the habitat.

3.5 ACT RESPECTING THREATENED OR VULNERABLE SPECIES

Activities carried out on or altering the habitat of a threatened or vulnerable plant species could, under the *Act respecting threatened or vulnerable species*, be subject to financial compensation.

3.6 FISH AND FISH HABITAT (*FISHERIES ACT*)

If compensation is required under the *Fisheries Act*, compensation measures may be proposed, namely:

- Habitat restoration and improvement;
- Habitat creation;
- Chemical or biological manipulation of water bodies;
- Additional measures such as data collection and scientific research under certain conditions.

Compensation measures must be commensurate with the adverse impacts and follow the elements of the *Policy for applying measures to offset adverse effects on fish and fish habitat* under the *Fisheries Act*.

4 CONCLUSIONS

4.1 IMPACT STUDY

The simultaneous application of federal and provincial environmental procedures in the territory of Eeyou Istchee - James Bay for transportation infrastructure projects complicates project planning and extends the time required for environmental impact assessment and permits procedures. In addition, the components are part of various territorial realities and involve the necessary participation and consideration of Cree, Inuit and non-Indigenous communities. In this regard, the design of the components must, from the outset, consider this diversity by respecting all territorial realities and minimize the loss of natural areas, wildlife and plant species, or fish habitat.

Consultation with all the communities involved will ensure from the outset a global vision of the project and its implementation from a perspective of social acceptability and respect for each of them.

The preparation of notices of intent and preliminary information must, as far as possible, consider all known environmental and social aspects for both the provincial and federal procedures. This is to ensure efficiency in dealing with the COMEV, KEQC and IAAC so that they can make their recommendations to the relevant authorities.

For both the provincial and federal environmental assessment procedures, the initiator is required to produce a complete impact study or any other study deemed necessary. The preparation and drafting of the impact study or additional studies can be a lengthy process, considering the recommendations of both the provincial (COMEV or KEQC) and federal (IAAC) assessment committees.

Since the content of the requirements differs between the two provincial and federal procedures, it is essential to align all these requirements in terms of the information to be collected and in the development of the project. The timeframes for assessment and review also differ. These differences will also need to be considered in the planning and execution of impact studies.

Considering the scope of the project and its components, the application of the various environmental and social assessment procedures and the importance of public and community consultation, it will be necessary to consider the optimization of the approaches, to promote the harmonization of processes and ensure consultation between the authorities concerned.

To do so, it is recommended that the authorities concerned be contacted quickly in order to establish procedures aimed at consultation, while respecting the legislative requirements at each level of decision-making.

4.2 PROVINCIAL AUTHORIZATIONS

The regulatory framework provided for in the EQA requires that authorizations be obtained before certain activities can be carried out, following receipt of the certificate of authorization resulting from the environmental and social assessment procedure.

The attention paid to the standards prescribed by the *Regulation respecting the sustainable management of forests in the domain of the State* and the *Regulation respecting wildlife habitats* will allow the project to be designed in a way that respects the components of the environment and the interests of each of the communities involved. It will also contribute to the social acceptance necessary for the project.

If project components affect the boundaries of protected areas, it may be possible to make changes to them, if this is adequately justified and respects the will and interest of the communities. In such cases, the boundaries of the areas or the conservation objectives could be modified, or a change in status could be made.

4.3 FEDERAL AUTHORIZATIONS

Several laws and regulations in the federal jurisdiction also require authorizations. Here again, attention to compliance with standards is essential for an efficient authorization process.

4.4 COMPENSATION

The implementation of the project components could require compensation for the loss of natural areas, wildlife and plant species, or fish habitat. To this end, it is necessary to consider, at the design stage, the applicable standards to ensure the best possible protection and management of the territory.

In fact, the design of the project will also reduce the need to require offsets to be included in the permit applications. This approach upstream of the project will optimize the analysis and processing times.

4.5 AUDIENCE PARTICIPATION

The environmental protection regimes defined by the JBNQA target the privileged participation of communities in the environmental assessment process. Taking their concerns into account can only promote openness and public participation.

Public participation is essential in order to gain opinions, or support both for designing project components and for building relationships with the public.

Public participation approaches are also subject to guidelines from authorities and review committees. These approaches must also be addressed in impact studies at both the federal and provincial levels (IAAC, 2022 and MELCC, 2020).

Typically, public participation includes achieving the following (JBACE, 2019):

- Communication and consultation plans and documentation of exchanges with the Indigenous and non-Indigenous communities concerned;
- The identification of contacts at community, political, associative and individual level and the implementation of communication and consultation plans, specifying their purpose and the subjects to be dealt with;
- The methodologies used for communications or consultations with target audiences;
- The translation needs and the types of documents adapted to the target audiences;
- The schedule to give the target audiences time to analyze the information on the project and provide their comments;
- The particular attention to indigenous knowledge and the inclusion of this information in the examination of the impacts of the project;
- Verification of the final content on the consultations with the persons and groups consulted;
- Documentation of activities, meetings and consultations and presentation of results in the impact study, particularly in the sections dealing with design, impacts and mitigation measures.

In addition, to simplify the public consultation process, and particularly for the communities, the steps both provincially and federally could be subject to a harmonized process while considering that the scope of the two environmental assessment processes differs from one to another, as does their timeline. Such a precedent for very large projects exists, as was the case for the EM-1A/Sarcelle Powerhouses and Rupert River Diversion hydroelectric project public consultations held in 2006.

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