

SECTION 22

Environment and Future Development Below the 55th Parallel

22.1 Definitions

For the purposes of this Section :

22.1.1 “Administrator” shall mean :

- i) In the case of matters respecting provincial jurisdiction, the Director of the Environmental Protection Service or his successor, or any person or persons authorized from time to time by the Lieutenant-Governor in Council to exercise functions described in this Section.
- ii) In the case of matters involving federal jurisdiction, any person or persons authorized from time to time by the Governor in Council to exercise functions described in this Section.
- iii) In the case of proposed development in Category I, the Cree Local Government Administrator responsible for the protection of the environment.

22.1.2 “Cree community” shall mean the Cree communities of Great Whale River, Fort George, Old Factory, Eastmain, Rupert House, Nemiscau, Waswanipi and Mistassini as well as any new Cree communities recognized as such by Canada and Québec.

22.1.3 “Cree economy” shall mean the activities and means by which Cree people earn, conduct and enjoy their economic livelihood.

22.1.4 “Development” or “Development Project” shall mean a project consisting of any work, undertaking, structure, operation, industrial process which might affect the environment or people of the Territory, exclusive of the operation and maintenance of such project after construction. However, the operation of such project shall form part of the considerations in the assessment and review procedures for the construction of such project.

22.1.5 “Section” shall mean this Section of the Agreement.

22.1.6 “Territory” shall mean the area in Québec south of the 55th parallel of latitude, (excluding the area in the vicinity of Schefferville south of the 55th parallel of latitude), and west of the 69th meridian of longitude, and including the Categories I and II lands of the Crees of Great Whale, and with the southern boundary coinciding with the southern limits of the Cree traplines as defined in Section 24.

22.1.7 “Preliminary Planning Stage” shall mean the stage at which a proponent studies the alternatives available and the technical, economic, financial and social dimensions of the project before taking a decision on the best alternatives to retain for further study.

22.2 General Provisions

22.2.1 The environmental and social protection regime applicable in the Territory shall be established by and in accordance with the provisions of this Section.

22.2.2 The said regime provides for :

- a) A procedure whereby environmental and social laws and regulations and land use regulations may from time to time be adopted if necessary to minimize the negative impact of development in or affecting the Territory upon the Native people and the wildlife resources of the Territory;
- b) An environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the Native people and the wildlife resources of the Territory;

- c) A special status and involvement for the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever such is necessary to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the Agreement;
- d) The protection of the rights and guarantees of the Cree people established by and in accordance with Section 24;
- e) The protection of the Cree people, their economies and the wildlife resources upon which they depend;
- f) The right to develop in the Territory.

22.2.3 All applicable federal and provincial laws of general application respecting environmental and social protection shall apply in the Territory to the extent that they are not inconsistent with the provisions of the Agreement and in particular of this Section. If necessary to give effect to the present Section of the Agreement, Québec and Canada shall take the required measures to adopt suitable legislation and regulations for such purpose.

22.2.4 The responsible governments and the agencies created in virtue of this Section shall within the limits of their respective jurisdictions or functions as the case may be give due consideration to the following guiding principles :

- a) The protection of the hunting, fishing and trapping rights of Native people in the Territory, and their other rights in Category I lands, with respect to developmental activity affecting the Territory;
- b) The environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the Territory;
- c) The protection of Native people, societies, communities, economies, with respect to developmental activity affecting the Territory;
- d) The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory;
- e) The rights and guarantees of the Native people within Category II established by and in accordance with Section 24 until such land is developed;
- f) The involvement of the Cree people in the application of this regime;
- g) The rights and interests of non-Native people, whatever they may be;
- h) The right to develop by persons acting lawfully in the Territory;
- i) The minimizing of negative environmental and social impacts of development on Native people and on Native communities by reasonable means with special reference to those measures proposed or recommended by the impact assessment and review procedure.

22.3 James Bay Advisory Committee on the Environment

22.3.1 A James Bay Advisory Committee on the Environment (hereinafter referred to as the “Advisory Committee”), a body made up of members appointed by the Cree Regional Authority, Canada and Québec is established to review and oversee the administration and management of the environmental and social protection regime established by and in accordance with this Section.

22.3.2 The Advisory Committee shall have thirteen (13) members. The Cree Regional Authority, Québec and Canada shall each appoint four (4) members. The Chairman of the Hunting, Fishing and Trapping Coordinating Committee established by and in accordance with Section 24 shall *ex officio* be a

member, save when the said Chairman is appointed from the members appointed by the Inuit party in which case the Vice-Chairman shall *ex officio* be a member.

22.3.3 Such members shall be appointed and replaced from time to time at the discretion of the respective appointing party. The appointing parties may upon unanimous consent increase or decrease the membership of the Advisory Committee.

22.3.4 The members of the Advisory Committee shall each have one (1) vote except as hereinafter provided otherwise :

- a) When matters of exclusive provincial jurisdiction are being dealt with by the Advisory Committee, the members appointed by Canada including the Chairman of the Hunting, Fishing and Trapping Coordinating Committee, when he has been appointed by Canada shall not vote;
- b) When matters of exclusive federal jurisdiction are being dealt with by the Advisory Committee, the members appointed by Québec including the Chairman of the Hunting, Fishing and Trapping Coordinating Committee, when he has been appointed by Québec, shall not vote;
- c) When matters of joint or mixed federal and provincial jurisdiction are being dealt with by the Advisory Committee, the members appointed by Québec and the members appointed by Canada shall each have one (1) vote and the members appointed by the Cree Regional Authority shall each have two (2) votes, and the Chairman of the Hunting, Fishing and Trapping Coordinating Committee shall have a vote.

22.3.5 The respective parties shall appoint a Chairman and Vice-Chairman of the Advisory Committee from among their appointees in the following manner :

- a) In the first year of the operation of the Advisory Committee, the Chairman shall be appointed by Québec and the Vice-Chairman shall be appointed by Canada;
- b) In the second year of the operation of the Advisory Committee, the Chairman and Vice-Chairman shall be appointed by the Cree Regional Authority;
- c) In the third year of the operation of the Advisory Committee, the Chairman shall be appointed by Canada and the Vice-Chairman shall be appointed by Québec;
- d) In the fourth year of the operation of the Advisory Committee, the Chairman and Vice-Chairman shall be appointed as provided in b);
- e) In subsequent years, the appointment of the Chairman and Vice-Chairman of the Advisory Committee shall take place in the sequence set forth in sub-paragraphs a), b), c) and d) of this paragraph;
- f) In the absence of the Chairman at any meeting, an alternate Chairman shall be selected by and from among the members appointed by the party that appointed the Chairman;
- g) The Vice-Chairman shall act as Chairman only when the Chairman does not have the right to vote pursuant to paragraph 22.3.4.

22.3.6 The Chairman and Vice-Chairman shall hold office for one (1) year.

22.3.7 The Advisory Committee may, from time to time, select from among its members such other officers as may be required to enable the Committee to fulfill its role and functions.

22.3.8 When matters of exclusive provincial jurisdiction or exclusive federal jurisdiction are being discussed, a quorum shall be five (5) members physically present provided that at least one (1) member appointed by each party whose members are entitled to vote is physically present.

22.3.9 When matters of joint provincial and federal jurisdiction are being discussed, a quorum shall be seven (7) provided at least one (1) member appointed by each party is physically present.

22.3.10 The quorums mentioned in the preceding paragraphs 22.3.8 and 22.3.9 may from time to time be changed with the unanimous consent of all members of the Advisory Committee.

22.3.11 A member of the Advisory Committee shall upon his appointment execute a written proxy in the form provided by the Advisory Committee in favour of the other members, including their replacements, appointed by the party that appointed the member executing the proxy. The holder of such a proxy shall have the right to vote and otherwise act in the place of the absent member from whom the proxy has been obtained, in addition to the voting and other rights that the member holding the proxy is entitled to exercise in his own right.

22.3.12 All decisions shall be decided by a majority of the votes cast.

22.3.13 The Chairman shall have, in the case of a tie vote, a second and deciding vote.

22.3.14 The Advisory Committee shall have a principal office within the Province of Québec, and may establish other offices within the said Province.

22.3.15 The Advisory Committee may establish and adopt by-laws regulating its own internal operations, including notice and place of meetings and other matters relating to the administration of the Advisory Committee. All members of the Advisory Committee shall be entitled to vote on such by-laws which shall be subject to the approval of each party to the Advisory Committee.

22.3.16 The Advisory Committee shall meet at least four (4) times annually.

22.3.17 The Chairman of the Advisory Committee shall convoke a special meeting of the Advisory Committee within twenty (20) days of receipt from any four (4) members of the Advisory Committee of a written request indicating the purpose of such meeting.

22.3.18 The Chairman or Vice-Chairman, as the case may be, shall preside over meetings of the Advisory Committee.

22.3.19 A secretariat shall be established for the Advisory Committee consisting of not more than five (5) full-time persons; however, the Advisory Committee may recommend an alteration to the size of the secretariat. The secretariat shall be responsible to and under the direction and control of the Advisory Committee. Québec and Canada shall equally maintain and equally fund the secretariat. The secretariat shall receive and distribute data to the members when appropriate, report the results of meetings and decisions of the Advisory Committee and perform such other functions as the Advisory Committee shall from time to time determine, pursuant to this Section.

22.3.20 An official record of minutes and decisions of the Advisory Committee shall be kept by the secretariat.

22.3.21 Agenda for meetings shall be prepared in advance and distributed to members by the secretariat.

22.3.22 Members of the Advisory Committee or the Advisory Committee itself may call upon other persons for expert advice or assistance. The remuneration and expenses of any such person shall be paid by the party appointing the member or members who requires the services of such person. The remuneration and expenses of such person shall be paid from the budget of the Advisory Committee if the services of such person have been requested by the Advisory Committee.

22.3.23 Each party shall pay the remuneration and expenses of the members it appoints.

22.3.24 The Advisory Committee shall be a consultative body to responsible governments and as such shall be the preferential and official forum for responsible governments in the Territory concerning their involvement in the formulation of laws and regulations relating to the environmental and social protection

regime and as such shall oversee administration and management of the regime through the free exchange of respective views, concerns and information.

22.3.25 The Committee shall, with adequate justification, recommend to responsible governments legislation, regulations and other appropriate measures related to the environmental and social protection regime for enactment or action by the appropriate authority.

22.3.26 The Committee shall examine environmental and social laws and regulations existing from time to time relating to the effects of development as well as existing land use regulations and procedures which might directly affect the rights of Native people established by and in accordance with Section 24 and this Section, and propose changes to responsible governments where appropriate.

22.3.27 The Committee shall examine and make recommendations respecting the environmental and social impact assessment and review mechanisms and procedures for the Territory.

22.3.28 The Committee shall be consulted from time to time on major issues respecting the implementation of the regime of the environmental and social protection and land use measures and may advise responsible concerned governments on the implementation of the environmental and social protection and land use regimes.

22.3.29 The Advisory Committee shall operate in accordance with the provisions of this Section.

22.3.30 All proposed regulations, measures and decisions of the Advisory Committee shall be communicated to the responsible government for attention, information and appropriate action.

22.3.31 Before submitting a regulation for enactment which relates only to the environmental and social protection regime and which is to apply only to Category II lands and/or Category I lands and/or Category III lands surrounded by Category I lands, the responsible Provincial or Federal Minister shall consult with the Advisory Committee provided that the failure to consult shall not invalidate the said regulations.

22.3.32 In the case of regulations recommended by the Advisory Committee which are to apply only to Category II lands and/or Category I lands and/or Category III lands surrounded by Category I lands, where the responsible Federal or Provincial Minister modifies or decides not to act upon such recommendations or decides to take new action, he shall before acting consult with the Advisory Committee provided that the failure to consult shall not invalidate the said regulations.

22.3.33 The James Bay Advisory Committee shall provide to the local government upon request technical and scientific information, advice or technical assistance, which it will obtain from the appropriate governmental agencies.

22.3.34 The Department of Lands and Forests shall when preparing a management plan for Crown forests and forestry operations, forward such management plan to the Advisory Committee for its consideration and comments before approving the said management plan. The said Committee shall make its comments, if any, known to the said Department within ninety (90) days.

22.4 Regulatory Power and Implementation in Categories I, II and III Lands

22.4.1 The local government shall have in Category I the by-law powers set forth in Sections 9 and 10.

22.4.2 All developments and activities in Category I lands shall have to meet all applicable provincial and federal environmental regulations and all applicable local government environmental and social and land use regulations.

22.4.3 Regulatory powers in Category II lands respecting land use and environmental and social protection shall be the responsibility of Québec or Canada as the case may be within their respective jurisdiction and shall be exercised in a manner consistent with the provisions of this Section.

JBNQA, par. 22.4.3
A. corr.

22.4.4 All permissible developments and activities in Category II will have to meet all applicable Québec and Canada environmental, social and land use regulations.

22.4.5 In Category III lands, regulatory power shall be vested in the Lieutenant-Governor in Council or the Governor General in Council as the case may be subject to the provisions of Sub Section 22.3 of this Section.

22.4.6 The administration and enforcement of the regulatory regime in Category III shall be the responsibility of Québec or Canada as the case may be.

22.5 Requirement for Impact assessment and Review

22.5.1 All developments listed in Schedule 1 shall automatically be subject to the impact assessment and review procedures provided for herein. A proponent of a development contemplated by this paragraph shall submit a project description to the Administrator during the preliminary planning stage. This list shall be reviewed by the parties every five (5) years and may be modified by mutual consent of the parties as may be necessary in the light of technological changes and experience with the assessment and review process.

22.5.2 All developments listed in Schedule 2 shall not be subject to an impact assessment or review. This list shall be reviewed by the parties every five (5) years and may be modified by mutual consent of the parties as may be necessary in the light of technological changes and experience with the assessment and review process.

22.5.3 The provisions of paragraphs 22.5.4 to 22.5.17 shall apply in the Territory to all development other than that contemplated in paragraph 22.5.2.

22.5.4 In the case of development contemplated in paragraph 22.5.1, the Administrator shall decide, in a manner consistent with the provisions of this Sub Section, and more particularly only after receiving the recommendation of the evaluating committee pursuant to paragraph 22.5.14, the extent of impact assessment which shall be required and the stages at which such assessment and review shall occur. The Administrator shall instruct or make recommendations to the proponent in accordance with the said decision.

22.5.5 The Administrator shall decide, in a manner consistent with the provisions of this Sub Section, and more particularly only after receiving the recommendation of the evaluating committee pursuant to paragraph 22.5.13, whether a proposed development not contemplated in paragraph 22.5.1 or 22.5.2 shall be assessed and reviewed. In the event that the Administrator decides that a proposed development shall be assessed or reviewed he shall act in the manner stipulated in paragraph 22.5.4.

22.5.6 There is established an Evaluating Committee, an advisory body, which shall be under the administrative supervision of the James Bay Advisory Committee on the Environment. The Evaluating Committee shall have six (6) members. Québec, Canada and the Cree Regional Authority shall each appoint two (2) members. The remuneration of a member shall be paid for by the body that appoints such member.

22.5.7 The members of the Evaluating Committee shall each have one (1) vote except as hereinafter provided otherwise :

- a) When development projects of exclusive provincial jurisdiction are being dealt with by the Evaluating Committee, the members appointed by Canada shall not vote;
- b) When development projects of exclusive federal jurisdiction are being dealt with by the Evaluating Committee, the members appointed by Québec shall not vote;
- c) When development projects of joint or mixed federal and provincial jurisdiction are being dealt with by the Evaluating Committee, the members appointed by the Cree Regional Authority shall each have two (2) votes. The members appointed by Québec and the members appointed by Canada shall each have one (1) vote unless otherwise agreed to by Québec and Canada. However, any change in the Federal/Provincial representation or the allocation of votes shall be without prejudice to the rights and guarantees in favour of the Crees established by and in accordance with this Section.

JBNQA, par. 22.5.7
A. corr.

22.5.8 The respective parties shall appoint a Chairman and Vice-Chairman of the Evaluating Committee from among their appointees in the following manner :

- a) In the first year of the operation of the Evaluating Committee, the Chairman shall be appointed by Québec and the Vice-Chairman shall be appointed by Canada;
- b) In the second year of the operation of the Evaluating Committee, the Chairman and the Vice-Chairman shall be appointed by the Cree Regional Authority;
- c) In the third year of the operation of the Evaluating Committee, the Chairman shall be appointed by the Canada and the Vice-Chairman shall be appointed by Québec;
- d) In the fourth year of the operation of the Evaluating Committee, the Chairman and the Vice-Chairman shall be appointed as provided for in b);
- e) In subsequent years the appointment of the Chairman and Vice-Chairman of the Evaluating Committee shall take place in the sequence set forth in sub-paragraphs a), b), c) and d) of this paragraph.

22.5.9 The Chairman or the Vice-Chairman, as the case may be, of the Evaluating Committee, who shall hold office for one (1) year, shall have a second and deciding vote.

22.5.10 The Administrator shall in all cases contemplated by this Sub Section consult with and take into consideration the advice of the Evaluating Committee.

22.5.11 The proponent shall submit to the Administrator the following preliminary information respecting the proposed development :

- a) In the case of developments contemplated by paragraph 22.5.1 :
 - i) Purpose of the project;
 - ii) Nature and extent of the proposed development;
 - iii) Intention to study alternative sites for development where appropriate;
 - iv) In the case when only one (1) alternative is proposed, reasons why no site alternatives are possible.
- b) In the case of development not contemplated in paragraphs 22.5.1 and 22.5.2 information contemplated in i), ii), iii) and iv) above and in addition information and technical data adequate to permit

a gross assessment of environmental and social impact of the project by the Evaluating Committee and the Administrator.

22.5.12 The Administrator shall forthwith transmit information referred to in paragraph 22.5.11 to the Evaluating Committee.

22.5.13 In the case of a development not contemplated in paragraphs 22.5.1 and 22.5.2, the Evaluating Committee shall determine if the proposed development may have a significant impact on the Native people, or on the wildlife resources of the Territory. On this basis, the Evaluating Committee shall recommend to the Administrator that either :

- a) The development has no such significant impact, and may proceed without assessment and review, or
- b) the development may have such a significant impact, and should be subject to assessment and review.

22.5.14 In the case of all development subject to assessment and review pursuant to paragraph 22.5.1 or 22.5.13, the Evaluating Committee shall recommend the extent of impact assessment and review and whether or not a preliminary and/or a final impact statement should be done by the proponent.

22.5.15 The Administrator shall, consistent with the provisions of the Agreement, and in particular this Section, and after considering among other possible factors the said recommendations, decide as the case may be, whether or not assessment and review shall be required and/or the nature and extent of such assessment and review and shall act in the manner stipulated in paragraphs 22.5.4 or 22.5.5 as the case may be. In the event that the Administrator cannot accept the recommendations of the Evaluating Committee or wishes to modify such recommendations he shall, before deciding, consult with the Evaluating Committee so as to explain his position and discuss same before formally informing the proponent or taking action thereon.

22.5.16 The Administrator shall notify the proponent of his decision within thirty (30) days of receipt of the information stipulated in paragraph 22.5.11 unless in the opinion of the Administrator, who may receive advice from the Evaluating Committee, an additional period is required for evaluating or the information submitted by the proponent is not adequate to perform such evaluation. Such period and delay do not apply to developments being carried out by or on behalf of Federal Government departments or agencies.

JBNQA, par. 22.5.16
A. corr.

22.5.17 The Administrator shall transmit his decision to the interested regional authorities. The information stipulated in paragraph 22.5.11 and the recommendations of the Evaluating Committee shall be available to the interested regional authority through its representatives on the Evaluating Committee. Such information or portion thereof may by exception be ordered withheld by the responsible Minister for reasons of national defence, national security or other justified reasons.

JBNQA, par. 22.5.17
A. corr.

22.6 Preparation and Review of Impact Statements

22.6.1 An Environmental and Social Impact Review Committee (hereinafter referred to as “the Review Committee”) is established which shall be the review body respecting development projects in the Territory involving provincial jurisdiction.

22.6.2 The Review Committee shall have five (5) members. Québec shall appoint three (3) members and the Cree Regional Authority shall appoint two (2) members. The Chairman shall be appointed by the

Lieutenant-Governor in Council from among the members appointed by the Provincial Government. The remuneration of a member and his expenses shall be paid for by the body that appoints such a member. However, the expenses of the Cree representatives shall be part of the costs of the secretariat.

22.6.3 The Review Committee shall be provided with an adequate staff to fulfill its functions and such staff shall be maintained and funded by Québec, subject to the approval of the budget for same.

22.6.4 There is established an Environmental and Social Impact Review Panel (hereinafter referred to as “the Review Panel”), a Federal panel, which shall be the review body respecting development projects in the Territory involving Federal jurisdiction.

22.6.5 The Environmental and Social Impact Review Panel shall be composed of three (3) members appointed by the Federal Government and two (2) members appointed by the Cree Regional Authority. The Chairman shall be appointed by Canada. At the discretion of the Administrator the size of the Review Panel may be altered from time to time according to the extent of the project being reviewed provided that the same proportion of Federal and Cree representation is respected. The Review Panel shall be provided with an adequate staff to fulfill its functions and such staff shall be maintained and funded by Canada, subject to the approval of the budget for same. The remuneration of a member and his expenses shall be paid for by the body that appoints such a member. However, the expenses of the Cree representatives shall be part of the costs of the secretariat.

22.6.6 All procedures and requirements provided for in this Sub Section and Sub Section 22.7 shall apply equally in the case of review of development by the Environmental and Social Impact Review Committee or the Environmental and Social Impact Review Panel.

22.6.7 The Federal Government, the Provincial Government and the Cree Regional Authority may by mutual agreement combine the two (2) impact review bodies provided for in this Section and in particular paragraphs 22.6.1 and 22.6.4 provided that such combination shall be without prejudice to the rights and guarantees in favour of the Crees established by and in accordance with this Section.

Notwithstanding the above, a project shall not be submitted to more than one (1) impact assessment and review procedure unless such project falls within the jurisdictions of both Québec and Canada or unless such project is located in part in the Territory and in part elsewhere where an impact review process is required.

22.6.8 The proponent shall prepare a statement of Environmental and Social Impact which shall include any requirements pursuant to paragraph 22.5.15 or applicable laws or regulations and such other information as is referred to in Schedule 3, as is applicable under the circumstances.

JBNQA, par. 22.6.8
A. corr.

22.6.9 The interested Cree community or communities through their local or regional government may make written representations to the proponent respecting the proposed development and may submit such written representations to the Review Committee or the Review Panel.

22.6.10 The proponent shall submit the impact statement of the proponent to the Administrator, who shall forthwith transmit it to the Review Committee or the Review Panel.

22.6.11 The review Committee or the Review Panel shall transmit such impact statement to the Cree Regional Authority. Such information or portion thereof may by exception be ordered withheld by the responsible Minister for reasons of national defence, national security or other justified reasons.

22.6.12 Within the first thirty (30) days of the forty-five (45) day period, referred to at paragraph 22.6.14, the interested Cree community or communities through their respective local government or regional

government may make representations to the Review Committee or the Review Panel. Such representations may be in written form, or where appropriate in oral form, and may include representations from interested individuals, if authorized by the interested local government.

The Administrator may extend such period when such extension is justified by the nature or extent of the project. The Review Committee or the Review Panel shall be consulted and may make recommendations respecting such extension. Such delay does not apply to developments being carried out by or on behalf of Federal Government Departments or agencies. This paragraph shall not be construed as limiting the right of the responsible Administrator to authorize more extensive representations.

22.6.13 On the basis of the said impact statement and other information before it, the Review Committee or the Review Panel shall recommend whether or not the development should proceed and, if so, under what terms and conditions including, if appropriate, preventive or remedial measures, or whether the development should be subject to further assessment and review and, if so, the data or information required.

22.6.14 The recommendations of the Review Committee or the Review Panel shall be transmitted to the Administrator within forty-five (45) days of receipt of the impact statement unless an additional period has been agreed to by the Administrator when such additional period is justified by the nature and extent of the project or when in the opinion of the Administrator the said statement is inadequate. The Review Committee or the Review Panel shall be consulted and may make recommendations respecting requirements for such an additional period. Such period and delay do not apply to developments being carried out by or on behalf of Federal Government Departments or agencies.

22.6.15 The Administrator, consistent with the provisions of the Agreement, and in particular this Section, and after considering among other possible factors the recommendations of the Review Committee or the Review Panel shall :

- a) In the case of an impact statement at a preliminary stage prepared pursuant to paragraph 22.5.15 or in the case of an inadequate statement, advise the proponent respecting the alternatives submitted or, further assessment required, or
- b) In the case of an impact statement submitted at a stage where a final decision may be made, decide whether or not on the basis of the environmental and social impact considerations the development should proceed and if so upon what terms and conditions, including if appropriate, preventive or remedial measures.

22.6.16 If pursuant to sub-paragraph 22.6.15 a) the Administrator so decides, the proposed development shall be subject to further impact assessment and review which may include the same information requirements, specifications for impact statements and procedures as are specified herein.

22.6.17 If the Administrator is unwilling or unable to accept any recommendations of the Review Committee or the Review Panel or wishes to modify such recommendations he shall, before deciding or, as the case may be, advising the proponent consult with the Review Committee or the Review Panel to explain his position and discuss such position with the Review Committee or the Review Panel.

22.6.18 The decision of the Administrator shall be transmitted to the proponent.

22.6.19 Subject to paragraph 22.7.2 the decision of the Administrator as to whether or not the development should proceed and if so under what terms and conditions shall bind the proponent who shall respect and give effect to such decision.

22.7 Final Provisions

22.7.1 If the proposed development is approved in accordance with the provisions of this Section, the proponent shall before proceeding with the work obtain where applicable the necessary authorization or permits from responsible Government Departments and Services. The Cree Regional Authority shall be informed of the decision of the Administrator.

22.7.2 Subject to the regime respecting Category I land provided for in Section 5, the Lieutenant-Governor in Council or Governor in Council may for cause authorize a development which has not been authorized pursuant to Sub Section 22.6 or alter the terms and conditions established by the Administrator pursuant to Sub Section 22.6.

22.7.3 In the event that a proposed development not authorized to proceed pursuant to Sub Section 22.6 is subsequently approved by the Lieutenant-Governor in Council or Governor in Council, or in the event that the Lieutenant-Governor in Council or Governor in Council alters the terms and conditions established by the Administrator, the Administrator after consulting with the Review Committee or the Review Panel may recommend to the Lieutenant-Governor in Council or Governor in Council the necessary environmental and social protection measures which should be respected by the proponent.

22.7.4 The environmental and social impact assessment review procedures shall be without prejudice to the legal rights and recourses of the Native people and proponents.

22.7.5 Nothing in the present Section shall be construed as imposing an impact assessment review procedure by the Federal Government unless required by Federal law or regulation. However, this shall not operate to preclude Federal requirement for an additional Federal impact review process as a condition of Federal funding of any development project.

22.7.6 The environmental and social impact assessment and review procedure which requires the establishment of the Evaluating Committee, the Review Committee and Review Panel shall be fully operative within a period of four (4) months following the date of coming into force of the Agreement. Between the date of the coming into force of the Agreement and the time that these committees become operative, the Administrator shall assume the responsibilities of the said committees.

22.7.7 Any development which has been approved or authorized by the Administrator before the date of coming into force of the Agreement by legislation, will not be subjected to the assessment and review procedure provided for in this Section. During this period, the environmental protection law will apply to the Territory and the parties to the Agreement will respect the interim measures described below. These interim measures shall apply to the Territory. They shall not apply to Le Complexe La Grande (1975), already agreed to in the Agreement, to projects of third parties not signatory to the Agreement, except those acting as agents, contractors, or sub-contractors to the parties in the Agreement and to mining investigations and mining explorations.

The parties to the Agreement will be subjected to the following interim measures :

- a) they will continue to incorporate environmental and social considerations in the planning of their future development which could potentially have a significant impact on Native people and the environment;
- b) prior to any construction and/or decision to construct new development, they will inform and consult the other parties at an appropriate time for meaningful consultation in connection with such development as follows :
 - the developer will provide a general description of the project together with its assessment of the project impact on the Native people referred to above and on the environment related thereto;

- the Native people will then be given the opportunity to discuss this assessment within reasonable delays;
 - if there is objection to the proposed project in account of a disagreement on the impact assessment, and any proposed remedial action, and that discussion has not resolved such disagreement, the Native people and the proponent shall formulate their objections and their justifications and refer the whole matter to the Administrator.
- c) they will provide information on field investigation of projects when the nature of these investigations might significantly affect Native rights contemplated in the Agreement and will discuss such activities with the Native people where considered appropriate by any party to the Agreement;
 - d) upon specific request from the Native parties, the Departments of Natural Resources, Lands and Forests, and Environment Protection Services, will supply information available to them with respect to projects of third parties;
 - e) they will take appropriate measures to make sure that all applicable environmental laws and regulations and existing government policies are respected;
 - f) nothing in the foregoing shall prejudice the right of the Federal and Provincial authorities to withhold information, the disclosure of which would be contrary to any existing law and regulation or to the interests of national security.

Notwithstanding paragraphs 22.7.6 and 22.7.7, Québec and Canada shall forthwith upon the execution of the Agreement, take the necessary measures to implement the provisions of Sub Section 22.3 of this Section respecting the James Bay Advisory Committee, with the exception of the provisions respecting the secretariat. Notwithstanding paragraphs 22.6.6 and 22.6.7, with respect to development projects falling under the Federal review process, Canada shall, during the transitional period referred to in Section 2 of the Agreement, continue in respect to Federal projects and Federal jurisdictions to exercise unilaterally existing Federal review processes and procedures with Cree participation.

22.7.8 Notwithstanding any of the interim measures referred to in this Section, nor the implementation thereof, nothing in the present Section shall be construed as constituting a recognition of any right of the Native people in the event that the Agreement does not come into force in accordance with the provisions in Section 2 of the Agreement.

22.7.9 The interim measures provided for in this Section shall not give rise to any right in favour of any Native person to invoke any or all of the interim measures in legal proceedings before the Courts in and of Québec.

22.7.10 The provisions of this Section can only be amended with the consent of Canada and the interested Native party, in matters of federal jurisdiction, and with the consent of Québec and the interested Native party, in matters of provincial jurisdiction.

Legislation enacted to give effect to the provisions of this Section may be amended from time to time by the National Assembly of Québec in matters of provincial jurisdiction, and by Parliament in matters of federal jurisdiction.

Annex 1

Future Developments Automatically Subject to Assessment

1. All new major mining operations excluding explorations.
2. Siting and operation of major sand and gravel pits and of quarries.
3. Energy production :
 - a) Hydro-electric power plants and their associated works.
 - b) Storage and water supply reservoirs.
 - c) Transmission lines of 75 kilovolts and above.
 - d) Extraction and processing of energy yielding materials.
 - e) Fossil-fuel fired power generating plants above three thousand (3,000) kilowatts .
4. Forestry and Agriculture :
 - a) Major access roads built for extraction of forest products.
 - b) Pulp and paper mills or other forestry plants.
 - c) In general, any significant change in land use substantially affecting more than 25 square miles.
5. Community and municipal services :
 - a) new major sewage and waste water collection and disposal systems.
 - b) solid waste collection and disposal, including land fill and incineration.
 - c) proposals for parks, wilderness areas, ecological reserves or other similar land classifications.
 - d) new outfitting facilities for more than thirty (30) persons, including networks of outpost camps.
 - e) new communities or significant expansion of existing communities.
6. Transportation :
 - a) access roads to and near Native communities.
 - b) port and harbour facilities.
 - c) airports.
 - d) railroads.
 - e) road infrastructure for new development.
 - f) pipelines.
 - g) dredging operations for navigation improvements.

JBNQA, Sch. 1
A. corr.

Annex 2

Future Development Exempt from the Requirement for Impact Assessment

- a) Any development within the limits of non-Native communities not directly affecting the wildlife resources outside these limits;

- b) small hotels, motels, service stations and similar structures on provincial or lesser highways;
- c) structures intended for dwellings, wholesale and retail trade, garages, offices or handicrafts and car parks;
- d) fossil-fuel fired power generating systems below three thousand (3,000) kilowatts;
- e) the following immoveables :
teaching establishments, banks, fire stations, immoveables intended for administrative, recreational, cultural, religious, sports and health purposes and immoveables and equipment used for telecommunications;
- f) the construction, modification, restoration, relocation or putting to another purpose of control and transformer stations of seventy-five (75) kilovolts or under and transport and electric power transmission lines of a voltage of seventy-five (75) kilovolts or under;
- g) the construction and extension of a pipe main of less than thirty (30) centimeters in diameter to a maximum length of five (5) miles;
- h) preliminary investigation, research, experiments outside the plant, survey and technical survey works prior to any project, work or structure;
- i) forestry development when included in governmental approved management plans, subject to the provisions of paragraph 22.3.34 of this Section;
- j) municipal streets and sidewalks built in accordance with municipal by-laws, and operation and maintenance of roads and highway structures;
- k) repairs and maintenance on existing municipal works;
- l) temporary hunting, trapping, harvesting camps ; outfitting facilities for less than thirty (30) persons;
- m) small wood cuttings for personal and community use;
- n) borrow pits for highway maintenance purposes.

The foregoing shall not be construed as restricting the requirements for environmental impact assessment under the Federal impact assessment and review process for Federal projects.

JBNQA, Sch. 2
A. corr.

Annex 3

Contents of an Environmental and Social Impact Statement

I- Introduction

This schedule describes the objectives, preparation and contents of an environmental and social impact statement prepared pursuant to this Section of the Agreement. In the exercise of his functions, and duties pursuant to this Section of the Agreement, the Administrator shall give due consideration to the provisions of this Schedule but shall not be restricted or bound by or to the said provisions.

The environmental and social assessment procedure provides for the Administrator pursuant to paragraphs 22.5.15, 22.6.15 and 22.6.16 to instruct or make recommendations to the proponent respecting the preparation of a preliminary or a final impact statement.

The preliminary environmental and social impact statement will evaluate site alternatives for the development and provide information for the determination of the need for a final statement of the retained alternative. The preliminary statement should be based on existing information and on information from reconnaissance or survey studies.

The final or detailed environmental and social impact statement of the retained alternative would be based on a much deeper knowledge of the environmental and social implications of the development.

The inclusion of specific items in the preparation of an impact statement will depend upon the nature and extent of the proposed development. Items potentially affected should be included in the report. Pursuant to paragraphs 22.5.15, 22.6.15 and 22.6.16, the Administrator may decide to what extent these guidelines for contents are appropriate in specific cases, and should be incorporated into a given impact statement.

II – Objectives

An impact statement should identify and assess clearly and in as factual a manner as possible, the environment and social impacts induced by the project, especially those on the Cree populations potentially affected.

The main objectives of an environment and social impact statement are to ensure that :

- Environmental and social considerations form an integral part of the proponent’s planning and decision-making process.
- Potential environmental and social impacts resulting from development are identified as systematically as possible.
- Alternatives to the proposed action, including alternatives to individual elements of large scale projects, will be evaluated with a view to minimizing within reason impacts on Native people and wildlife resources and maintaining the quality of the environment.
- Remedial or preventive measures will be incorporated into proposed development so as to minimize within reason expected negative impacts.
- The Review Committee, the Review Panel and the Administrator are adequately informed to be able to take the decisions for which they are responsible under this Section.

In general, the impact assessment procedure should contribute to a further understanding of the interactions between Native people, the harvesting of wildlife resources and the economic development of the Territory, and also to promote understanding of ecological processes.

The impact statement is expected to be short and concise and contain an adequate guide to the contents and to the conclusions of the study, and it should also contain a clear summary containing the essential arguments and findings of the proponent. The statement may be in French or in English at the option of the proponent.

III – Contents

The following outline gives the major headings that should be included in any impact statement.

1. Description of the Project.

The following should be included in the project description :

- a) Purpose and objectives.
- b) Location or alternative locations being considered.
- c) Identification of area and human populations potentially affected by each project location being considered.
- d) Physical plant, activities involved in construction phase of development, including an estimate of size and composition of work force.
- e) Material/energy balance for the plant (Input/Output).
- f) Physical and human requirements for operation phase of the project.
- g) Possible future phases of the development.

2. Environmental and Social Setting

The state of the environmental and social setting should be described before the proposed development begins, in order to have a reference point for the evaluation of the impacts of the development.

The description should not only include the identification and description of the components identified below, but should equally consider their ecological relationships, their interaction, and when appropriate, their scarcity, sensitivity, productivity, variety, evolution, location, etc. The level of details provided in the description should be based upon the importance, and the implications of the specific impacts involved.

The following is a representative list of the items that could be considered in the environmental and social setting. Any item potentially affected should be included.

Environmental conditions

Lands

- Physical :
- topography
 - geology
 - soil and drainage

Vegetation

Fauna

Water

- Physical :
- hydrology
 - quality

Vegetation

Fauna

Air

Climate

Micro-climate

Quality

Social conditions

- Populations :
- demography
 - residence
 - ethnic composition
- Land use :
- settlements and habitations
 - basic utilities
 - roads
 - harvesting patterns
 - known archaeological sites
 - cemetery and burial sites
- Harvesting :
- use of various species

- Income and
 - importance
 - standard of living
- employment :
 - employment
- Institutions :
 - enterprises
 - education
 - utilities
 - transportation
 - other service institutions
- Health and safety
- Social organization :– family
 - community
- Culture :
 - ethnic relations
 - values
 - goals and aspirations

3. Predicting and Evaluating Probable Impacts

This part of the Schedule involves the identification, evaluation and synthesis of impacts associated with the headings referred to in the part of this Schedule entitled “Environmental and Social Setting”.

The proponent may, at his discretion, include in his statement a section on information and questions submitted by the community potentially affected. Where he considers it appropriate the proponent may discuss and comment upon such information or questions.

This section of the statement should consider, whenever appropriate, direct, indirect and cumulative impacts; short term and long term impacts; reversible or irreversible impacts. Attention should also be given to impacts occurring at different phases of the development, and on different scales, i.e. local, regional or national scale.

The proponent should in his prediction and evaluation of impacts discuss the reliability and adequacy of the information used, limitations imposed upon his study by the unavailability of information, and areas of significant uncertainty and risk.

4. Alternatives to the proposed project

When justified by the nature of the project, there should be a section which explores and objectively assesses the impact on the Native people and on the environment of reasonable site alternatives of the project in the Territory and/or of reasonable alternatives to certain elements of the proposed project. These alternatives should be considered with a view to optimize as much as reasonably possible the positive effect of the development on the environment, taking into account environmental, socio-economic and technical considerations and to minimize negative impacts including impacts on the affected population, as reasonably as possible. Where the gross impact of alternative actions differs significantly, the analysis should be sufficiently detailed to permit the comparative assessment of the costs, benefits, and the environmental risk to the different interested populations between the proposed project and the available options.

5. Corrective and remedial measures

The proponent should include in the statement a section identifying and evaluating reasonable remedial or corrective measures which should reduce or alleviate the negative impact of the proposed development on Native people, wildlife resources of the Territory and the quality of the environment in general. Measures aimed at enhancing positive impacts induced by the project should also be included in this section.

JBNQA, Sch. 3

A. corr.