ANNUAL GENERAL ASSEMBLY
July 15, 16, & 17, 2008, Quebec City, QC

Resolution no. 22/2008

SUBJECT:	Crown Consultation, Accommodation and the Free, Prior and Informed Consent of First Nations
MOVED BY:	Chief Marcel Balfour, Norway House Cree Nation, MB
SECONDED BY:	Doug Kelly, Proxy, Shxw'ow'hamel First Nation, BC
DECISION:	Carried by consensus.

WHEREAS:

A. The UN Declaration on the Rights of Indigenous Peoples recognized the obligation of states to obtain the free, prior and informed consent of indigenous peoples in relation to any development of our lands, territories and resources and to consult and cooperate in good faith with our representative institutions before adopting and implementing legislative or administrative measures that may affect our rights and interests;

B. The Supreme Court of Canada in the *Sparrow, Haida*, *Taku, Mikisew Cree* and other cases, set out the Crown's legal duty to consult with First Nations and accommodate Aboriginal title and rights. The law is now clear that the duty to consult is founded upon the honour of the Crown;

C. Courts have affirmed that the duty to consult – and to provide accommodation – arises at the earliest point the Crown contemplates action that might infringe on First Nation rights;

D. The courts have also affirmed that the intent of section 35 of the *Constitution Act* is ultimately to achieve reconciliation between the sovereignty of the Crown and the rights of First Nations;

E. In November, 2007, the federal government announced an Action Plan to address the legal duty to consult and accommodate, which will establish interdepartmental mechanisms to monitor and coordinate consultation and accommodation practices and create a repository and inventory of information on the location and nature of established

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and potential Aboriginal and Treaty rights. Subsequently, the federal government has issued Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult;

F. The federal Consultation and Accommodation Action Plan has been developed unilaterally without the full engagement and the support of First Nations;

G. The Chiefs-in-Assembly put forward a number of principles regarding Crown Consultation in 1989. These continue to be valid, and should form the basis of any federal policy or approach, as well as be expanded to encompass principles regarding notice, engagement, accommodation and free, prior and informed consent;

H. The Assembly of First Nations is a nationally delegated forum to support the advancement of the aspirations of First Nations through policy analysis and development, information gathering and sharing and advocating for First Nations perspectives and interests. The AFN is not a rights-holder and cannot assume the responsibility for exercising the Crown's fiduciary duty to First Nations; and

I. Disputes such as that experienced by Kitchenumahykoosib Inninuwug (KI) First Nation, continue to reveal that Crown approaches are unacceptable, inadequate and cause harm for First Nations.

THEREFORE BE IT RESOLVED that:

1. The Chiefs-in-Assembly reaffirm the 8 basic principles of meaningful consultation, originally introduced in AFN Resolution 4/1989, and that are now further reinforced and strengthened by subsequent Court decisions directing Crown consultation and accommodation to achieve reconciliation.

2. The Chiefs-in-Assembly call upon the federal government and all provincial governments to launch full and meaningful engagement processes – and provisions for joint-policy development – with First Nations on the Crown duty to consult, accommodate and seek free, prior and informed consent.

3. First Nations affirm that all legislative measures, grants or disposition of Crown lands and every license, permit or decision affecting lands, waters and natural resources be subject to such Consultation policies and processes as defined by Supreme Court decisions.

4. The Chiefs-in-Assembly encourage regions and individual First Nations to network, initiate gatherings and share information and experiences to address mutual perspectives and approaches on the Duty to Consult and obtain free, prior and informed consent.

5. The Chiefs-in-Assembly hereby limit the role of AFN to the procedural aspects of any consultations which may include facilitation and coordination, but does not include decision-making which remains with the rights holders: First Nations of Canada.

6. The Chiefs-in-Assembly further direct that the Assembly of First Nations engage with the federal government to ensure that the rights and interests of First Nations are protected and advanced in the further development of any federal action concerning consultation and accommodation.

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7. The Chiefs-in-Assembly will require consultation, accommodation and the free, prior and informed consent of First Nations as established in the Treaty relationship.

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