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## Assembly of First Nations

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55 Metcalfe Street, Suite 1600  
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Telephone: 613-241-6789 Fax: 613-241-5808  
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## Assemblée des Premières Nations

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February 20, 2018

The Right Honourable Justin Trudeau, P.C., M.P.  
Prime Minister of Canada  
Office of the Prime Minister  
80 Wellington Street  
Ottawa, Ontario K1A 0A2

Dear Prime Minister,

**Re: Environmental and Regulatory Reviews**

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As you may already be aware, I have recently assumed responsibility as the portfolio lead for the Environmental and Regulatory Reviews. With that in mind, I want to thank you for your November 22, 2017, replies to our letter of October 16, 2017. We were pleased to receive your letters affirming the need for stronger environmental assessment and regulatory processes in Canada, and the centrality of First Nations in this regard.

In the intervening weeks, our officials have been in discussions with Minister McKenna's office to address some of the concerns of First Nations. While we have not yet resolved every issue, with your commitment to "engage even more deeply" in the components that relate to First Nations, coupled with your recognition that conversations with First Nations add value to your government's attempt to strengthen the environmental assessment and regulatory framework, we are writing to inform you of our decision to resume this work.

On December 3, 2017, the Assembly of First Nations' (AFN) Executive Committee passed a motion to recommence working with the Government of Canada on the legislative review of the *Canadian Environmental Assessment Act*, the *National Energy Board Modernization*, the *Fisheries Act*, and the *Navigation Protection Act*. And, based on this, at our most recent Special Chiefs Assembly, on December 5-7, 2017, the Chiefs-in-Assembly affirmed this motion by passing resolution 73/2017 (attached).

To this end, we are preparing to re-engage our officials in technical discussions with Canada, with the guidance and oversight of our respective political leaders. A commitment has been made for political leaders to meet quarterly to discuss these and other issues, and to provide the necessary direction and oversight that a process as complex as this one requires in order to be effective.

In addition, we would like to highlight several aspects of the intervening discussions that have served to secure our re-engagement; we do this to ensure clarity in regards to the process that will ensue:

- A commitment to transparency and openness from your officials on the timelines for the parliamentary process, regulatory development, and policy development, to the extent possible;

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- A clear communication strategy that provides First Nations with up-to-date information, sufficient timing for funding envelopes and engagement sessions, and diverse opportunities for input;
- A distinct and clearly setout “Consultation” process between the Crown and First Nations that will engage directly with treaty and rights holders;
- Adequate funding provided directly to each region to enable First Nations to engage in the work that is expected to unfold over the next 12-18 months; and
- Specific opportunities for regionally-specific dialogue.

In closing, our officials have begun to re-engage with one another in order to resume technical discussions and to formally establish the mechanism for political oversight to be advanced this year.

Respectfully,



Kluane Adamek,  
ACCAE Co-Chair

c.c.: Regional Chief Bill Erasmus, ACCAE Co-Chair  
Regional Chief Kevin Hart, ACCAE Co-Chair  
Regional Chief Roger Augustine, NFC Co-Chair  
Regional Chief Terry Teegee, NFC Co-Chair  
The Honourable Minister McKenna, P.C., M.P. (Environment and Climate Change)  
The Honourable Minister Carr, P.C., M.P. (Natural Resources)  
The Honourable Minister LeBlanc, P.C., M.P. (Fisheries)  
The Honourable Minister Garneau, P.C., M.P. (Transport)

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**SPECIAL CHIEFS ASSEMBLY**  
**December 5, 6 & 7, 2017, Ottawa, ON**

**Resolution no. 73/2017**

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**TITLE:** Environmental and Regulatory Reviews

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**SUBJECT:** Environment

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**MOVED BY:** Kukpi7 Ron Ignace, Skeetchestn Indian Band, B.C.

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**SECONDED BY:** Chief Lance Haymond, Kebaowek First Nation, QC

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**DECISION** Carried; 1 abstention

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**WHEREAS:**

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities.
  - ii. Article 32 (2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
  - iii. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measure shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.

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**Certified copy of a resolution adopted on the 6<sup>th</sup> of December 2017 in Ottawa, ON**

  
**PERRY BELLEGARDE, NATIONAL CHIEF**

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- I. First Nations cannot, only rely on "common law" or the *Navigation Protection Act* for the protection of our waterways.
- J. Given this challenge, the AFN has taken the initiative to prepare its own First Nations-specific discussion paper that draws on the hundreds of submissions from First Nations and their representative organizations made to Canada, and included information from technical sessions.
- K. The Government of Canada has since submitted a Memorandum to Cabinet on the environmental and regulatory processes, looking to have a Draft Bill tabled either at the end of this December sitting of Parliament or during the beginning of the January sitting of Parliament.
- L. Following the tabling of this legislation, Canada appears willing to engage in a joint process of reviewing legislative amendments, policies, regulations and guidelines relating to the four environmental and regulatory processes. This process is expected to take between twelve and eighteen months.
- M. Prime Minister Trudeau reflected this commitment in his letter sent on November 22, 2017 to the Advisory Committee on Climate Action and the Environment (ACCAE) Co-Chairs.
- N. The Chiefs-in-Assembly resolved in Resolution 20/2017 "... *that the current engagement process cannot be construed as "consultation" and fails to meet the free, prior and informed consent standard and that additional time must be afforded to consult directly with rights holders in a manner that is respectful of their unique protocols, processes, and elements*".

**THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:**

- 1. Direct the Assembly of First Nations (AFN) to pursue the commitment from Canada for co-development of legislative amendments, policies, regulations, and guidelines for the environmental and regulatory processes, and the creation of a body which combines technical discussions, political oversight, and regional representation.
- 2. Call upon Canada to meet or exceed the precedent set in the development and eventual passage of the Species-at-Risk Act, which involved full, direct, and unfettered participation of First Nations.
- 3. Direct the AFN to continue supporting and coordinating, where possible, the interventions and participation of First Nations, regional organizations, and provincial/territorial organizations in the co-development process mentioned above, including creating regionally specific processes to address specific concerns, as well as support provisions as part of nation-to-nation relationships.
- 4. Call on all responsible Ministers to provide adequate funding directly to individual First Nations for their full and effective participation in the environmental and regulatory reviews.
- 5. Mandate the AFN to conduct regional information sessions to support First Nations, regional organizations, and provincial/territorial organizations in the process.

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PERRY BELLEGARDE, NATIONAL CHIEF