

The DFN negotiating team provided the following detailed report on progress in the Dehcho Process to the 15th Annual Dehcho Assembly at Fort Simpson, June 26-29, 2007.

The General Agreement-in-Principle (GAIP) was not discussed in detail and has not yet been officially tabled to negotiators for Canada and the GNWT. This will be done at next negotiations session in September.

DFN Chief Negotiator's Report on the Dehcho Process

June, 2007

This report is intended to provide DFN members with an update on developments in Dehcho Process negotiations.

Executive Summary

Exploratory discussions towards an Agreement-in-Principle, which will guide negotiations towards a Dehcho final agreement based on land selection, are underway. DFN negotiators tabled a draft Agreement-in-Principle in April. Federal negotiators tabled a partial draft AiP on June 4, 2007. Presently DFN negotiators only have a mandate to explore an agreement based on land selection, but not to negotiate.

Canada and the GNWT have refused to approve and implement the Land Use Plan despite Canada's promise in the 2005 Settlement Agreement to approve the Plan "as soon as possible" after its' completion. They say the Plan would "protect too much land" from development. They also want implementation of the Plan linked to approval of an AiP based on land selection.

In April, 2007 an agreement was reached on terms of reference and a work plan for the Dehcho Land Use Planning Committee to revise the Land Use Plan so that it can be approved by all parties. The DFN will still have to work hard to have the revised Plan implemented.

Agreement-in-Principle (AiP) Negotiations

An Agreement-in-Principle is an agreement in which the parties outline in basic terms how issues will be dealt with in a final, legally binding agreement. An AiP is not legally binding. Some AiPs are very detailed while others are shorter and more general. The Dehcho Framework Agreement signed in 2001 gives some direction as to which issues will be addressed in an AiP and in a final agreement.

Up to now the DFN have said they will not negotiate a conventional land claim agreement under Canada's Comprehensive Claims policy because it would mean selecting parcels of land for ownership while surrendering title to the rest of the land to Canada. Instead, the DFN have proposed "shared stewardship" of the entire Dehcho Territory under a public government based on Dene laws and customs.

However, Canada has refused to negotiate a shared stewardship model. Canada says that it will only negotiate a comprehensive land claim agreement with the Dehcho which is "comparable" to other agreements in the NWT, based on land selection. Under a "comparable" formula, the DFN could expect to end up owning about 60,000 square kilometres of the Dehcho Territory, while the Crown would own the other 155,000 square kilometres. DFN members would continue to have treaty harvesting rights throughout the Dehcho Territory but would only have self-government over their selected lands.

As part of AiP negotiations, Canada also wants to negotiate major revisions to the Dehcho Land Use Plan, which was approved at the 2006 DFN Assembly.

The November, 2006 Special Assembly gave DFN negotiators a mandate to “explore” land selection. The Assembly also directed that the DFN continue to stress the importance of compliance with existing agreements between the DFN and Canada, especially agreements in which Canada promised to implement the completed Land Use Plan (LUP).

The Relationship between the Dehcho Land Use Plan and an AiP

Minister Prentice has stated that he has directed his negotiator, Tim Christian, to negotiate changes to the LUP in conjunction with the AiP based on land selection. In a February, 2007 letter to Minister Prentice, the Grand Chief called Land Use Planning “the cornerstone of the Interim Measures Agreement” and called on the Minister to honour Canada's agreements to implement the Land Use Plan regardless of whether or not there is an AiP or final agreement in the Dehcho Process.

Although an agreement was reached in April to continue the land use planning process and develop a revised Land Use Plan acceptable to all parties, Canada continues to say that it will not implement *any* land use plan until an AiP based on land selection has been achieved. On the other hand, the DFN continue to argue that land use planning and AiP negotiations are completely separate and that the Plan should be implemented as soon as it is completed, regardless of progress towards a Dehcho AiP.

The DFN must give direction as to what measures will be used to persuade Canada to agree to implement the revised Land Use Plan when it is completed in early 2008.

General Agreement in Principle (GAiP) Negotiations

In the meantime, while we are pressing Canada to honour its’ commitments to approve and implement the LUP, the DFN team has been busy drafting a proposed General Agreement-in-Principle (GAiP). The GAiP is also being developed into a plain English document and translated into Slavey.

On April 27, 2007 the DFN team tabled the version of the GAiP which was approved by the Leadership in their March 5, 2007 teleconference. Discussions on the GAiP began at the negotiating session held June 4-7 in Yellowknife.

The draft GAiP to be reviewed at the 2007 Assembly has been substantially revised in comparison to the version approved by Leaders on March 5. The new version of the GAiP includes new definitions for terms in the GAiP, as well as new chapters on jurisdictions, justice, enrolment and implementation and Métis issues. If the new version is approved it will be tabled at the next negotiating session in place of the March 5 version.

At the June 4-7 session in Yellowknife federal negotiators made several comments on the comments on the DFN draft AiP, including the following:

- Canada wants to negotiate a detailed AiP, not a shorter General AiP;
- the proposed land quantum (108,000 square kilometres – article 5.3) is almost double the quantum allowable for the DFN under Canada's Comprehensive Claims policy mandate;
- Canada does not accept as a fact that the DFN have “lived in Ndeh according to their own laws and systems of government since time immemorial” (preamble);
- Canada will not agree to use the term “retained” lands instead of “selected” lands;
- Lands which are not selected by the DFN will not be “shared” lands – they will be Crown lands;

- Canada will not agree to explicitly state (article 3.3.6) that self-government is an inherent right of the Dehcho Dene;
- Canada does not accept that a Dehcho government will have any areas of exclusive jurisdiction (article 6.1); and
- DFN draft needs to be clear as to whether community lands will be part of Dehcho selected lands, or separate from Dehcho Ndeh.

The Dehcho Land Use Plan

The Interim Measures Agreement signed by the DFN, Canada and the GNWT in 2001 established the Dehcho Land Use Planning Committee. Canada and the GNWT were full, equal partners in the development of the Plan and were consulted throughout the Planning Process. The Planning Committee staff worked very hard to develop a Plan which has been praised by public interest groups and land use planning experts all over Canada as an outstanding model of cooperation that balances the interests of conservation and development. The complete Dehcho Land Use Plan was approved by the DFN at the 2006 Assembly.

The Land Use Plan which was approved by last year's Assembly would protect 61% of the Dehcho from oil and gas development and 69% would be protected from mining. These areas would be protected for traditional uses.

In the Settlement Agreement signed in July, 2005 to end the DFN legal challenge to the Joint Review Panel established to conduct the environmental assessment of the MGP, Canada promised to implement an approved Land Use Plan "as soon as possible after the Plan's completion".

In clear violation of both the IMA and the Settlement Agreement, Canada informed the DFN on October 26, 2006 that they will not implement the Land Use Plan until Canada and the DFN have reached a land selection AiP in the Dehcho Process based on land selection, including land quantum and financial issues. They also said that they wanted to dissolve the Planning Committee established under the IMA and have Dehcho Process negotiators negotiate changes to the Plan at the same time as negotiating the land quantum provisions of an AiP.

Federal negotiators have also said that they believe that only 40% of the Dehcho territory should be protected from development, but they have so far refused to say which conservation zones are too large or how they think the Plan should be changed.

If the Land Use Plan is not approved and implemented, the interim land withdrawals which were agreed to in 2003 could expire in October, 2008, leaving all Dehcho lands exposed to sale, lease and development. Canada is now holding the Plan hostage to an agreement based on land selection in the Dehcho Process negotiations and renegeing on their commitments to implement the Plan. This is troubling because it will likely mean that the DFN will have to trade progress on the LUP for progress on an AiP. It was never intended that the Plan would be part of AiP negotiations.

At the April, 2007 negotiating session in Yellowknife both the DFN and Canada made some compromises which will allow the Plan to be revised over the next 12 months, but some major issues have still not been resolved.

Canada has agreed that the Land Use Planning Committee will work on revisions to the Plan. The revised Plan would then have to be approved by the Chief Negotiators at the main table and submitted to political leaders for approval in early 2008. Canada has also agreed to a work plan which would allow the revised Plan to be approved (but not necessarily implemented) in early 2008. There is still no commitment by Canada to implement the Plan, despite their promise in

article 13 of the 2005 out-of-court Settlement Agreement to implement it as soon as possible after its completion.

We have stressed that our mandate requires that Canada must comply with its commitments to approve *and* implement the Land Use Plan as soon as possible.

The terms of the agreement reached at the April 24-27, 2007 session are:

- DFN agrees to re-open the Plan to allow changes to be made to accommodate Canada's and the GNWT's concerns that the Plan "protects too much land". Any revised Plan will have to be approved by all three parties.
- DFN will cooperate with making changes to the Planning Committee membership to allow Canada and the GNWT to replace their members on the Committee and give them new instructions. The Parties will jointly agree on a new Chair to replace the current Chair, Herb Norwegian. The DFN have suggested that former Grand Chief Michael Nadli would be the most suitable person to act as Chair.
- Any changes to the Plan would be made primarily through the Land Use Planning Committee since this is the process which was established in the IMA, *not* at the Dehcho Process negotiating table. However, the Dehcho Process Main Table will have to approve the revised Plan before it is submitted for approval by elected leaders.
- All parties would approve the revised Land Use Plan in early 2008.
- No date or timetable has been agreed to for implementing the approved. Canada continues to insist that the Plan will only be approved together with an AiP based on land selection while the DFN will continue to insist that the Plan be implemented as soon as possible after it is approved, whether or not an AiP is close.
- Canada would extend the current land withdrawals until the LUP is implemented, with revisions to reflect the conservation zones in the Land Use Plan.

The work plan and terms of reference for the Planning Committee for the current fiscal year which were agreed to at the April, 2007 session are attached to this report.

Devolution – Resource Revenue Sharing Agreement-in-Principle

A Resource Revenue Sharing Agreement-in-Principle was signed on May 9, 2007 between the GNWT and the Inuvialuit Regional Corporation, the Gwich'in Tribal Council, The Sahtu Secretariat and the Northwest Territory Métis Nation. The government of Canada is not a party to the AiP, nor are the Tlicho or the Akaitcho.

It is important to note that all of the Aboriginal groups which have signed the AiP are very different from the DFN because they have either extinguished title to their traditional territories (Inuvialuit, Gwich'in and Sahtu) or have vague and undefined claims to land and resources (NWT Métis). These groups do not have any significant claims to ownership of lands or resources outside of their small selected parcels. They therefore have virtually no leverage in negotiating a resource revenue sharing agreement with Canada or the GNWT. The DFN, on the other hand, retain ownership of their entire Territory and must be a party to any agreement on the sharing of revenue from resource development anywhere in the Dehcho.

The AiP signed on May 9 falls far short of DFN objectives with respect to resource revenue sharing:

- Presently resource revenues are collected by Canada, not the GNWT, but Canada is not a party to this AiP.
- There is no mention in the AiP of reforming the present out-dated royalty regime. Under the current royalty regime Canada collects very, very little revenue compared with neighbouring jurisdictions such as Alberta, B.C., Saskatchewan and Alaska. The DFN have proposed to introduce competitive bidding by companies to establish market based royalties instead of the current work-bid system which generates very little income from the sale of publicly owned resources. It does not appear that this important issue has been considered at all.
- The AiP is NOT really a resource revenue sharing agreement at all. In fact, it only calls for sharing of a so-called "Net Fiscal Benefit". The Net Fiscal Benefit is defined as "the amount of resource revenue derived by the GNWT through the Devolution Agreement not offset under any Territorial Formula Financing Agreement entered into from time to time between the Government of Canada and the GNWT, so as to provide the NWT with a positive financial benefit from resource development." The Net Fiscal Benefit could end up being a very small amount, especially in light of the fact that the GNWT has already promised industry that devolution will not result in a reformed royalty regime.
- The Aboriginal groups who are parties to this AiP will only share "up to 25%" of the so-called Net Fiscal Benefit.
- The Net Fiscal Benefit sharing "will be established through territorial legislation" and resource revenues will be "collected centrally", not by First Nations governments.

Before considering the content of the AiP, it may be useful to get answers to the following questions:

- Was the AiP negotiated or was it simply offered by the GNWT as a "take it or leave it" proposal?
- If it was negotiated, who were the parties to the negotiations?
- Why were the negotiations held in secret instead of in the open?
- Are minutes or other records of the negotiations available?
- What other options or draft agreements were considered by the negotiators before this one was signed?

It has been the position of DFN up to now that resource revenue sharing should be negotiated through the Dehcho Process, and that these negotiations should be between Canada and the DFN since the GNWT does not own any lands or resources in the Dehcho Territory and is not a party to the Treaties. In our view, the AiP signed on May 9 shows that the DFN should continue to take the position that any agreement on the collection and sharing of revenues from resource development in the Dehcho should be between the DFN and Canada.

KFN Working Group

The KFN working group is a "side table" created by the Dehcho Process main table in 2004. Its' mandate is to address issues which primarily affect the KFN, including KFN's Treaty Land Entitlement (TLE) claims which seek additional reserve lands, and issues concerning the status of the Town of Hay River. Sam Gargan represents the DFN negotiating team on the KFN working group.

The settlement "offer" tabled by Canada in 2006 states that it is Canada's position that the KFN will be able to sign either a Treaty Land Entitlement (TLE) claim agreement with Canada, or the Dehcho Process final agreement, but not both. If they choose the Dehcho Process they will not have a reserve but instead will have a share of Dehcho title (fee simple) lands.

The GAiP which has been developed by the negotiating team would allow the KFN to fully participate in the Dehcho final agreement while also pursuing their Specific Claims. (See Article 17.4)

Métis Issues

The Dehcho Métis are full partners in the Dehcho Process. They have made several suggestions as to how their interests can be protected through an AiP. The draft AiP to be considered by this Assembly defines "Dehcho Dene" broadly to include all persons with ancestors who were Dene and who lived in or occupied land in the Dehcho Territory prior to the signing of Treaty 11.

The AiP also says: "The Dehcho Agreement will ensure that any legal distinctions or program access distinctions between Dehcho Dene on the basis of *Indian Act* status are eliminated."

The Fort Providence Métis have also brought forward other issues which they would like to see addressed in a Dehcho final agreement, including redress for past injustices and protection for the Michif language and Métis culture. The DFN Assembly and Leadership will have to decide how far the DFN negotiating team should go in pushing Métis interests in the Dehcho Process.

Nahanni Park Expansion

The DFN continue to push for the protection of the entire South Nahanni watershed as a high priority. Currently approximately 85% of the watershed is protected through the 2003 interim land withdrawals agreement with Canada.

In June, 2003 Parks Canada and the DFN signed a Memorandum of Understanding on Park Expansion. The MoU provides that consultations will be completed by September, 2006 and an agreement to expand the Park boundaries will be completed by September, 2007. These deadlines are now in serious doubt.

The consultations which were supposed to be completed by September, 2006 have not yet been held and there is no sign of movement by Canada towards reaching agreement on expanded Park boundaries.

Protected Areas Strategy (PAS)

Although it is an extremely slow and bureaucratic process, the DFN also continue to support the PAS as a way of protecting sensitive lands which have not yet been protected through the interim land withdrawals agreement or through the Dehcho Land Use Plan.

The Edehzhie PAS process began in 1999. Currently the Edehzhie is protected under an Order-in-Council issued in 2002 which withdrew the area from development while discussions continue on whether it should be permanently protected. That OiC is due to expire on June 30, 2007. This would leave the Edehzhie open to mineral staking and development. The sponsoring agency for the PAS process is the Canada Wildlife Service. Apparently the CWS has requested an extension to the land withdrawals in June, 2006, but the federal Cabinet has still not issued a new OiC.

On June 7 Canada's chief negotiator was asked whether a new OiC would be issued before the current one expires on June 30. He refused to answer, claiming "Cabinet secrecy". In our view, any right which the federal Cabinet has to keep this information secret is outweighed by the clear and strong public interest in knowing whether the Edehzhie will still be protected after June 30 or whether it will be open for development.

Training / Capacity Building

The negotiations team is working to develop a plan for training and capacity building to ensure that DFN members are capable of taking advantage of employment opportunities which may result from implementing a Dehcho final agreement. Although a final agreement is probably still

several years away, we want to give DFN members every opportunity to be ready to take on new jobs when the Dehcho territory finally becomes self-governing once again.

West Point First Nation

WPFN have asked the negotiating team to work with them on a strategy to secure additional land for their community. The current land base is far too small to allow for any new housing or economic development. The negotiations team will explore options for achieving the goals of WPFN through a Dehcho final agreement, or through other means, such as legal action.

These discussions are currently on hold pending resolution of the dispute with respect to representation of WPFN.

Next Steps

The next negotiating session is scheduled for September, 2007 in Rabbit Kettle. It will focus on AiP negotiations.

In view of Canada's refusal to honour existing agreements in which they promised to implement the Land Use Plan whether or not an AiP has been achieved, it is important that DFN leaders develop a strategy to persuade Canada to implement the Land Use Plan without tying it to AiP negotiations.

GENERAL AGREEMENT-IN-PRINCIPLE

Between

THE DEHCHO FIRST NATIONS

And

The Government of Canada

And

The Government of the Northwest Territories

WHEREAS Dehcho First Nations have lived in Ndeh according to their own laws and systems of government since time immemorial; and

WHEREAS the Peace Treaties of 1899 and 1921 between the Dene and the Crown recognize the inherent political rights and powers of the Dehcho First Nations; and

WHEREAS the Métis of Ndeh have endured discrimination as a result of their exclusion from programs and services and denial of access to harvesting rights on the grounds that they are not registered "Indians" under the *Indian Act*; and

WHEREAS it is intended that the Dehcho Agreement will eliminate discrimination against the Métis of Ndeh; and

WHEREAS Canada, the GNWT and the DFN have entered into a Framework Agreement, and an Interim Measures Agreement (IMA), and Canada and the DFN have entered into an Interim Resource Development Agreement (IRDA), an Interim Land Withdrawals Agreement, a Memorandum of Understanding on Expansion of Nahanni National Park Reserve, an Interim Park Management Arrangement and a Settlement Agreement, all of which agreements remain valid and effective; and

WHEREAS the laws of the Dehcho Dene do not allow them to cede, release, surrender or extinguish their inherent rights; and

WHEREAS the Parties agree that the reconciliation of the legitimate constitutional interests of the Dehcho Dene and of the Crown can only be achieved if the Parties agree to make mutual concessions during the negotiating process; and

WHEREAS the Parties share the objective to negotiate and agree upon a solution in respect of their legitimate rights and interests; and

WHEREAS the Parties, in an effort to promote the attainment of their common objective, agree to pursue their negotiations without any prejudice to their respective legal positions and to ensure that their communications during their negotiations may not be used by one Party against the other before the courts; and

WHEREAS the Parties have agreed upon an Agreement-in-Principle which shall serve as the basis for the drafting of a Treaty which shall be a modern treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

ARTICLE 1 – DEFINITIONS

Agreement means: this agreement.

Community Government: means the governments Kue Zhagola Gondehe, based on Dene laws and customs, for each of the ten geographic areas of Dehcho Ndehe.

Dehcho Dene means: a person who is a descendant of a Dene who resided on, used or occupied land in Ndeh prior to December 31st, 1922, and who identifies as a Dene or as a Métis, or a person who was adopted as a minor under the laws of any jurisdiction or under Dehcho Dene custom by a Dene who resided on, used or occupied land in Ndeh prior to December 31st, 1922, or is a descendant of a person so adopted.

Dehcho Agreement means: the Dehcho Final Agreement.

Dehcho Ndehe means: Lands retained by the Dehcho First Nations and owned in fee simple, inclusive of all sub-surface minerals.

Environment means: the components of the Earth including (a) land, water, and air; including all layers of the atmosphere; (b) all organic and inorganic matter and living organisms; and (c) the interacting natural systems that include components referred to in (a) and (b); and (d) the social, cultural and economic components of Ndeh and the residents of the Dehcho Settlement Area.
Kue Zhagola Gondehe means: Community lands owned in fee simple title, inclusive of all sub-surface minerals. The geographic areas will be sufficient to allow for growth for 100 years. The geographic areas are shown in a general way in the map attached as Appendix

Minerals means: precious and base metals and other naturally occurring substances that can be mined, and includes

- a) coal, native sulphur, construction stone, carving stone, limestone, soapstone, marble, gypsum, shale, clay, sand, gravel, volcanic ash, earth, ochre, marl or peat, and
- b) All substances regulated under the Territorial Coal Regulations, the Territorial Dredging Regulations or the Territorial Quarrying Regulations; and
- c) Natural gas and includes all substances, other than oil, that are produced in association with natural gas; and
- d) crude petroleum regardless of gravity produced at a well-head in liquid form, and
- e) any other hydrocarbons, including hydrocarbons that may be extracted or recovered from surface or subsurface deposits, including deposits of oil sand, bitumen, bituminous sand, oil shale and other types of deposits.

Ndeh means: The Settlement Area, also known as the Dehcho Territory.

Ndeh title means: fee simple, inclusive of all sub-surface minerals.

Retained Land means: Dehcho Ndehe.

Shared Lands means: Crown lands within the Settlement Area which are not part of Dehcho Ndehe.

Settlement Area means: The Dehcho Territory, also known as Ndeh, shown on the map attached as Appendix , inclusive of Shared Lands and Dehcho Ndehe.

ARTICLE 2 – OBJECTIVES OF DEHCHO AGREEMENT

2.1

The Dehcho Agreement will clarify and build upon Treaties 8 and 11, but will not replace them or result in the restriction or extinguishment of any Treaty or Aboriginal rights.

2.2

The Dehcho Agreement will provide that Dehcho Dene will continue to hold Treaty and Aboriginal harvesting right throughout their respective Treaty areas and traditional harvesting areas.

2.3

The Dehcho Agreement will recognize the responsibilities and jurisdictions of a Dehcho government which will:

- a) make laws and deliver programs and services;
- b) be primarily based upon Dehcho First Nations' laws and customs; and
- c) be the primary government for Dehcho Dene residents of Dehcho Ndeh.

2.4

The Dehcho Agreement will provide for certainty and clarity of rights respecting land, resources and governance.

2.5

The Dehcho Agreement will provide for governance in the Settlement Area which promotes sustainable development, ecological integrity, and respect for the land, as that term is understood and explained by the Dehcho Dene elders.

2.6

The Dehcho Agreement will provide for a significant role for the Dehcho Dene in the management and conservation of lands and resources throughout the Settlement Area, through the Dehcho Resource Management Authority, the Dehcho Land Use Planning Committee, and other mechanisms agreed to by the parties.

2.7

The Dehcho Agreement will provide for equality between Dehcho Dene, without discrimination on the basis of sex, age, religious beliefs or status under the *Indian Act (Canada)*.

2.8

The Dehcho Agreement will provide that the cultures of the Dehcho Dene, including their language, Dene Zhatie, shall be protected and enhanced.

ARTICLE 3 – GENERAL PROVISIONS AND CERTAINTY

3. PURPOSE AND SCOPE OF THE AGREEMENT-IN-PRINCIPLE

3.1.1

This agreement is an Agreement-in-Principle of general nature in which the Parties agree upon the structure, the general direction and the principles that will guide the drafting of the Dehcho Agreement. It is also an agreement, where specified, that certain actions will be taken by the Parties.

3.1.2

The Dehcho Agreement will not be limited to the provisions of this Agreement but will remain substantially in conformity with this Agreement.

3.1.3

This Agreement does not create legal obligations binding the Parties, nor does it infringe on the obligations or existing rights of the Parties and shall not be construed so as to abrogate, derogate or recognize any aboriginal, treaty or any other right.

3.1.4

This Agreement-in-Principle was negotiated and concluded without prejudice to the rights of the Parties and nothing in this agreement can be construed as changing the legal situation of either Party or modifying the legal relationship between Canada and the Dehcho First Nations prior to the conclusion of the Dehcho Agreement and the coming into force of the implementation legislation.

3.2 NATURE OF THE DEHCHO AGREEMENT

On the effective date the Dehcho Agreement shall be a modern treaty and shall have the legal protection of a "land claims agreement" under sections 25 and 35 of the *Constitution Act, 1982*. The term "land claims agreement" is used herein because that term is used in the *Constitution Act, 1982*, and not because the Dehcho Dene "claim" any land within the Dehcho Territory.

3.3 RECOGNITION OF ABORIGINAL RIGHTS AND CERTAINTY

3.3.1

The Aboriginal and Treaty rights, including Aboriginal title and rights under Treaties 11 and 8, of the Dehcho Dene shall be recognized, affirmed and continued by the Dehcho Agreement and the implementation legislation. From then on, these rights shall also be protected by the Dehcho Agreement. They shall have the effects and shall be exercised in the manner provided for in the Dehcho Agreement.

3.3.2

The historical and cultural importance of Treaties 8 and 11 shall be recognized in the Dehcho Agreement. The Dehcho Agreement will provide that annual meetings will be held to affirm this importance, to make treaty payments, and to recognize and affirm the importance of the Dehcho Agreement.

3.3.3

The rights of the Crown covered by the Dehcho Agreement shall, from then on, be exercised with respect to the lands and resources of the Dehcho in accordance with the provisions of the Dehcho Agreement.

3.3.4

Neither the Dehcho Agreement nor the implementation legislation shall have the effect of infringing on the rights of the Dehcho Dene as regards land located outside of the limits of the Northwest Territories.

3.3.5

The Dehcho Agreement will not seek to exhaustively enumerate or replace the Aboriginal and treaty rights, including Aboriginal title and rights under Treaties 11 and 8, of the Dehcho Dene with Dehcho Agreement rights. It shall ensure that these rights, as well as the rights it creates, receive protection under section 35(1) of the *Constitution Act, 1982*.

3.3.6

Self-government, as an inherent right, is included among the Aboriginal rights of the Dehcho Dene. It shall have the effects and be exercised by the Dehcho Dene and by each Dehcho First

Nation community according to the manner set out in the Dehcho Agreement within the Dehcho Territory and, when the Dehcho Agreement so provides, outside of the Dehcho Territory.

3.3.7

The Dehcho Agreement shall include measures for the protection and promotion of the Dene and Métis cultures and languages, including Dene Zhatie.

3.3.8

Nothing in the Dehcho Agreement shall prevent a Dehcho First Nation community or their members from participating in the programs of the governments of Canada and the NWT or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

3.3.9

Nothing in the Dehcho Agreement shall prevent a Dehcho government or Community Government from participating in the programs of the governments of Canada and the NWT or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

3.4 TERRITORIAL APPLICATION

3.4.1

The provisions of the Dehcho Agreement shall apply in the Northwest Territories.

3.4.2

The status of Dehcho Dene rights and interests in the Yukon Territory, British Columbia and Alberta will be addressed prior to the signing of the Dehcho Agreement.

3.4.3

The boundary and overlap issues between the Dehcho and Sahtu, Akaitcho and Dene Tha' will be considered prior to the signing of the Dehcho Agreement.

3.4.4

The following will be finalized prior to the signing of a Dehcho Agreement:

- a) The status of Nahanni National Park (Reserve), including final boundaries on Park expansion, and the role, authorities, and jurisdiction of the Dehcho First Nations in the joint management of the Park.
- b) The Dehcho Agreement shall guarantee the continuation of Aboriginal and Treaty rights of the Dehcho First Nations in Nahanni National Park (Reserve). These rights include, but are not be limited to, activities listed in s. 8(a) of the Interim Park Management Arrangement.
- c) Upon the designation of Nahanni National Park Reserve to full National Park status, all Aboriginal and Treaty rights shall continue in full effect in Nahanni National Park.
- d) The Nahanni Consensus Team shall be established as a permanent body. The structure, functions and authorities of the Consensus Team shall not be limited to the provisions of the Interim Park Management Arrangement, but shall remain substantially in conformity with the Interim Park Management Arrangement.

- e) The Management Plan for the Park shall not be limited to the provisions of the Interim Park Management Arrangement, but shall remain substantially in conformity with the Interim Park Management Arrangement.

ARTICLE 4 – LAND USE PLANNING

4.1

An approved Dehcho Interim Land Use Plan (LUP) will be implemented and legally binding at a date no later than the date of the signing of this Agreement.

4.2

The Dehcho Agreement will provide that the Land Use Planning provisions of the Dehcho Interim Measures Agreement (IMA) will remain in effect throughout the Settlement Area, with any modifications necessary to reflect the fact that land use planning will from then on be a permanent feature of land and resource management in the Settlement Area.

4.3

The Dehcho Agreement will provide that all recommendations and decisions concerning lands and resource use in the Settlement Area shall conform to an approved land use plan.

ARTICLE 5 – LAND

5.1 - LAND TITLE

5.1.1

The Dehcho Agreement will provide that legal title to all lands permanently protected under the Protected Areas Strategy (PAS) or the expanded Nahanni National Park will be vested in the Crown. The Agreement will further provide that the boundaries and status of Parks or protected areas cannot be changed without the consent of affected DFN communities.

5.1.2

The Dehcho Dene will retain all of their Treaty and Aboriginal harvesting rights throughout the Settlement Area and throughout their respective treaty areas and traditional harvesting areas.

5.1.3

The Dehcho Agreement will provide that the Dehcho Dene, through the Dehcho government, will retain ownership of 108,000 sq km of surface and subsurface lands, exclusively or primarily from areas not protected under the LUP or PAS.

5.1.4

Subject to article 5.5, the Dehcho Agreement will provide that the lands retained by the Dehcho Dene will be called "Dehcho Ndehe", and will include both the surface and all sub-surface materials, and will be owned by the Dehcho Dene through the Dehcho regional government.

5.1.5

The Dehcho Agreement will provide that, in addition to Dehcho Ndehe, each community in the Dehcho will have Ndeh title to current community settlement lands, plus sufficient lands to allow the community to grow for 100 years. These areas will be known as Kue Zhagola Gondehe.

5.1.6

The Dehcho Agreement will provide that, in addition to Dehcho Ndehe and the Kue Zhagola Gondehe, the Dehcho Dene, through the Dehcho regional government, will own 30% of the subsurface in all Shared Lands.

5.2 RIGHT OF ACCESS ON DEHCHO NDEHE

5.2.1

The Dehcho Agreement will provide that, except as otherwise provided for in the Agreement, a person other than a Dehcho Dene may not enter, cross or remain on Dehcho Ndehe without the consent of the Dehcho Government.

5.2.2

For greater certainty, a Dehcho Dene may enter, cross or remain on Dehcho Ndehe lands year-round.

5.2.3

The Parties agree that the Dehcho Agreement shall provide for access on Dehcho Ndehe for public and safety purposes and for free circulation on waterways and public highways.

5.2.4

Public purposes refer to infrastructures, such as roads, bridges, airports, maritime structures, navigation aids and communication towers, as well as to public services, such as power transmission and lines and gas pipelines.

5.2.5

The Dehcho Agreement shall provide that the interested Parties shall negotiate in good faith to determine the conditions allowing for the use, installation, maintenance and renovation of these infrastructures and services. These conditions may be the subject of complementary agreements.

5.2.6

In the case of a new access on Dehcho Ndehe or of the modification of an existing access the Dehcho Dene shall be entitled to be indemnified or compensated by equivalent lands. Where the Parties concerned cannot agree upon such compensation, the Dehcho Dene, shall be entitled to a monetary compensation established through arbitration pursuant to the provisions of Chapter XX.

5.2.7

The Parties shall agree prior to the signing of the Dehcho Agreement upon measures ensuring the right of the citizens of neighboring communities to continue their use of the Settlement Area, including the harvesting of fire wood for personal purposes, in conditions similar to those currently prevailing.

5.3 - STATUS OF LANDS

5.3.1

The Dehcho Agreement will provide that the effects and manner in which Treaty and aboriginal rights, including aboriginal title, are to be exercised on the Settlement Area, are protected by section 35 of the *Constitution Act, 1982*.

5.3.2

In accordance with the provisions of article xxx, the Parties express their will that the territories of Dehcho Ndehe and Kue Zhagola Gondehe shall not include any land reserved for Indians within the meaning of section 91 (24) of the *Constitution Act, 1867* or any reserve within the meaning of the *Indian Act*.

5.4 - PRESENCE OF THIRD PARTIES ON DEHCHO NDEHE

5.4.1

Subject to article 5.4.3, and according to mechanisms which shall be set out in the Dehcho Agreement, the ownership and private use rights of third parties which exist at the date of the Dehcho Agreement on Dehcho Ndehe shall be respected or compensated for equitably.

5.4.2

Subject to article 5.4.3, the rights provided to third parties on Dehcho Ndehe by Canada or the GNWT, and still in force on the effective date of the Dehcho Agreement, shall be respected until their expiry date or according to terms and conditions to be agreed upon. When such rights may be renewed, this renewal shall be undertaken by the Dehcho Government according to the terms of the rights in question.

5.4.3

Third party rights, including mineral leases, prospecting permits and land leases, which were acquired by third parties despite the timely objections of affected DFN communities, shall not be protected by any provisions of the Dehcho Agreement or implementing legislation.

5.5 - EXPROPRIATION

5.5.1

The Dehcho Agreement will provide that any person or authorized representative of any person, who has power of expropriation under federal legislation (expropriating authority), may exercise that power of expropriation in accordance with laws of general application as qualified by the Dehcho Agreement and implementing legislation.

5.5.2

Nothing in this article shall be construed to give the Dehcho Government more extensive powers of expropriation than are given to the legislatures of the Provinces.

5.5.3

Any expropriation legislation coming into force after the date of ratification of the Dehcho Agreement shall, insofar as it applies to Dehcho Ndehe, provide for the following minimum procedures:

- a. notice of intention to expropriate served on the Dehcho Government;
- b. an opportunity for the Dehcho Government to object to the expropriation on the basis that the expropriating authority has not complied with the expropriation legislation, and an opportunity to be heard on that objection; and
- c. the determination of compensation by negotiation and mediation and, failing that, by reference to arbitration or committee referred to in article 5.5.7.

5.5.4

Where an interest in Dehcho Ndehe is expropriated, the expropriating authority shall, if reasonably possible, offer compensation in the form of alternate lands of equivalent utility and value in the Settlement Area, or in combination of lands and money.

5.5.5

Where the expropriating authority acquires an estate in fee simple, those lands shall no longer be Dehcho Ndehe lands. Lands acquired as compensation for expropriation shall be Dehcho Ndehe lands. Where lands which have been expropriated are no longer required, the Dehcho Government shall have an option for six months following such a determination to re-acquire those lands as Dehcho Ndehe lands. If the parties are unable to agree on a price, the matter shall be referred to the arbitrators or committee referred to in article 5.5.8.

5.5.6

The Dehcho Government shall not be required to take compensation in the form of alternate lands.

5.5.7

Where the Dehcho Government and the expropriating authority continue to disagree on compensation, and mediation, if provided for, fails, the final determination of any compensation payable shall be by arbitration;

- a. as set out in the arbitration provisions of Article xxx, other than for expropriation under the *National Energy Board Act*; or
- b. for expropriation under the *National Energy Board Act*, by an arbitration committee appointed under the Act that shall include at least one nominee of the Dehcho Government. The Minister in establishing the arbitration committee shall choose members who have special knowledge of, and experience related to, the criteria set out in Section 5.5.8.

5.5.8

In determining the amount of compensation payable to the MDO the arbitrators or committee shall be guided by:

- a. the market value of the land;
- b. loss of use to the Dehcho Dene and Dehcho Government;
- c. the effect on wildlife harvesting by Dehcho Dene;
- d. the adverse effect of the taking, upon lands retained by the Dehcho Dene;
- e. damage which may be caused to the land taken;
- f. nuisance, inconvenience and noise to the Dehcho Dene;
- g. the cultural attachment of Dehcho Dene to the land;
- h. the peculiar and special value of the land to Dehcho Dene;
- i. the effect on rights and benefits otherwise provided by the Dehcho Agreement;
- j. an amount to cover reasonable costs associated with the Dehcho Government inspections as deemed appropriate by the arbitrators or committee;
- k. an amount to cover reasonable costs to the Dehcho Government associated with the arbitration; and
- l. any other factors as may be provided for in legislation.

5.5.9

Where an expropriating authority would have a power of expropriation of Dehcho Ndehe, that power may not be exercised if 10% of all Dehcho Ndehe lands or an interest therein has already been and remains expropriated: or

5.5.10

In calculating the areas expropriated in Section 5.5.9, no account shall be taken of those situations in which the Dehcho Government accepted alternative lands in exchange for expropriated lands.

ARTICLE 6 - JURISDICTION

6.1

The Dehcho Agreement will provide that the Dehcho regional Government will have exclusive legislative jurisdiction over Dehcho Ndehe in the following areas:

Government structure / internal management

Citizenship and eligibility
Management and protection of Dehcho Ndehe outside of communities, including parks
Renewable resources
Harvesters' assistance
Agriculture
Non-renewable resources, including mining and mineral claims
Rivers, lakes and water
Pollution control and enforcement
Environmental management and protection
Protection of heritage resources and practices
Language, culture and arts
Training
Social assistance
Housing, including social housing
Child and family services
Adoption and guardianship
Intoxicants
Wills and estates
Education, including post-secondary
Marriages and vital statistics
Alternative dispute resolution services
Taxation, including income, property (outside of Kue Zhagola Gondehe), sales, user fees, business license fees
Regional economic development, including economic development in communities, which have not legislated for economic development
Negotiation of impact and benefits agreements for major developments
Regional education services, including capital planning, distance education and specialized education
Sub-surface lands and resources, including royalties
Regional roads and public works
Regional elections
Public safety and law enforcement outside of communities
Regional health services
Practice of traditional medicine
Intergovernmental relations
Regional protected areas
Borrowing
Emergency measures
Justice, including enforcement (policing) and administration (courts)
Research licenses and permits
Tourism
Gaming
Museums and artifacts
Intellectual property (including TK)
Professional certification and standards
Labour standards and labour relations
Holidays
Construction standards

6.2

The Dehcho Agreement will provide that the Dehcho community governments will have legislative jurisdiction over Kue Zhagola Gondehe in the following areas:

Operations and internal management of community governments
Borrowing

Management and administration of community lands
Community land use planning
Community housing – construction and maintenance
By-law enforcement within the community
Intoxicants (shared jurisdiction with regional government)
Local transportation
Pre-school
Community elections
Community based economic development
Municipal services, including water, sewage, waste management and fire dept.
Property taxation, business and user fees
Local wildlife harvesting - fisheries and harvesting
Renewable resources within community boundaries, – Flora/fauna
Community protected areas
Impact and benefit agreements for non-major projects
Emergency measures
Language and Culture
Recreation
Education – Local implementation and management
Dene medicine (shared jurisdiction)
Local land health
Local Dene knowledge

6.3

In addition to its jurisdictions under 5.1, the regional government will have jurisdiction to legislate in areas of local jurisdiction when local governments have not legislated.

6.4

The Dehcho Agreement will provide that the Dehcho government and the Crown will have shared legislative jurisdiction over Dehcho Ndehe in some areas.

6.5

The Dehcho Agreement will provide that the Dehcho government and the Crown will have shared legislative jurisdiction over Crown lands in the Settlement Area in the following areas:

- a) Oil and gas exploration
- b) Mines and minerals
- c) Renewable resources, including, without limitation, forestry, wildlife, water and fisheries
- d) Heritage resources
- e) Environmental assessment and regulatory approval
- f) Land use planning, including infrastructure corridors
- g) Royalties

ARTICLE 7 – GOVERNANCE STRUCTURES

7.1

The Dehcho Agreement will recognize a Dehcho regional government which will be a Dene government, chosen by and representing the Dehcho Dene. The Dehcho regional government will be based on Dene laws, customs values and principles.

7.2

Institutions will be implemented to ensure that non-Dene have a role in decision making with respect to any decisions which would affect their rights or interests.

7.3

The Dehcho Agreement will recognize Dehcho community governments which reflect the interests and capacity of each Dehcho community. All residents of the Dehcho who meet a five (5) years' residency requirement will be entitled to vote and run in local community elections. 50% of seats on local councils will be reserved for Dehcho Dene. In addition, the position of Chief or local community leader will be reserved for persons who are Dehcho Dene.

7.4

The Dehcho Agreement will provide that the regional government of the Dehcho and the Dehcho community governments will have legal status comparable to that of local and regional Aboriginal governments recognized in other modern treaties.

ARTICLE 8 – LAND AND WATER REGULATION

In this article "land" or "lands" means surface and subsurface lands.

Environment means...

8.1

The following principles apply to this article:

- (a) an integrated system of land and water management should apply in the Dehcho Settlement Area; and
- (b) the regulation of land and water in the Dehcho Settlement Area should be harmonized with adjacent areas, and with the Mackenzie Valley Resource Management Act; and
- (c) the Dehcho Resource Management Authority (DCRMA, board) shall be the main instrument to regulate lands, waters and resources in the Dehcho Settlement Area, including, but not limited to land use planning, land and water regulation, environmental impact assessment and environmental impact review.

8.2

Legislation shall require the DCRMA to co-ordinate board activities with the following bodies: the Naha Dehe Consensus Team for the joint management of Nahanni National Park (Reserve); any body established to manage or administer any national, territorial, or tribal park or site; any body established to manage or administer Protected Areas; any body established to monitor or assess cumulative effects; any body established to manage or administer lands, waters, wildlife, fisheries, renewable and non-renewable resources not otherwise provided for in the Dehcho Agreement.

DEHCHO RESOURCE MANAGEMENT AUTHORITY

8.3.1

A board, to be called the Dehcho Resource Management Authority, shall be established, on the effective date, by legislation, as an institution of public government, to regulate the use of land and other resources, and water and the deposit of waste throughout the Dehcho Settlement Area, except in Nahanni National Park (Reserve), or other national park or historic site. National parks, including historic sites, shall be jointly administered by Parks Canada and the Dehcho Government as set out in article _____. For greater certainty, the DCRMA shall have authority to regulate lands and resources, land use planning, environmental assessment and environmental impact review in the Dehcho Settlement Area.

8.3.2

The DCRMA shall not have authority for activities no part of which is outside the Dehcho Settlement Area, and which have no impact on the Dehcho Settlement Area.

8.3.3

To the extent a community government has power to regulate the use of land, the board shall not have authority to regulate the use of land in that community, unless the community government designates the authority to the DCRMA. For greater certainty, the Dehcho Government shall have jurisdiction to legislate in Kue Zhagola Gondehe when community governments have not legislated.

8.3.4

The *Mackenzie Valley Resource Management Act* and relevant legislation shall be amended to be brought into conformity with the relevant provisions of this chapter and the Dehcho Agreement.

8.3.5

Excluding the Chairperson,

(a) 50 percent of the members of the DCRMA shall be appointed by the Dehcho Government; and

(b) 50 percent of the members of the DCRMA shall be appointed by government.

8.3.6

The authorities entitled to appoint members to the DCRMA under 8.3.5 shall consult each other before making their appointments. Each authority shall make its appointments to the DCRMA within 6 months of the effective date.

8.3.7

The Chairperson shall be nominated by the other members of the DCRMA and shall be jointly appointed by consensus of the authorities entitled to appoint members to the DCRMA under 8.3.5(a) and 8.3.5(b). The members of the DCRMA may nominate one of themselves or any other person. Should the parties under 8.3.5 fail to appoint a Chair by consensus, the Chair will be chosen by _____.

8.3.8

The objective of the DCRMA is to provide for the conservation, development and utilization of the land, waters, and other resources in the Dehcho Settlement Area, having regard to the interests of all Canadians, but particularly the interests of the present and future residents of the Dehcho Settlement Area. In exercising its powers, the DCRMA shall take into consideration the importance of conservation, and the principles of respect for the land, as understood and explained by the Dehcho Elders, and sustainable development.

8.3.9

Legislation shall provide that the decisions of the DCRMA in relation to Dehcho Ndehe are subject to policy direction from the Dehcho Government, and in relation to the use of water or the deposit of waste, the approval of the Dehcho Government.

8.3.10

The Dehcho Government shall have exclusive jurisdiction to enact and amend legislation concerning lands, resources, water and the deposit of waste in Dehcho Ndehe. Before enacting legislation regulating the use of land, resources, water or the deposit of waste or any amendments to such legislation that applies to Dehcho Ndehe, the Dehcho Government, including any community government, shall consult the DCRMA in relation to its application to Dehcho Ndehe.

LAND USE PLANNING

8.4.1

The DCRMA shall exercise its authority in conformity with an approved Dehcho Land Use Plan;

8.4.2

Legislation shall provide that the Dehcho Land Use Plan will be a permanent feature in the Dehcho Settlement Area. The approved Land Use Plan shall be a legally binding document. For greater certainty, all recommendations and decisions concerning lands, resources, water and the deposit of waste in the Dehcho Settlement Area shall conform to an approved Land Use Plan.

8.4.3

The Land Use Plan shall be subject to review and revision by the DCRMA every five years. The methodology for revisions to the Land Use Plan, including provisions pertaining to Land Use Plan approval, shall conform to the provisions of the Interim Measures Agreement concerning Land Use Planning, and shall be set out in legislation. The Dehcho Government and community governments shall have a meaningful role in the plan revision process.

8.4.4

The DCRMA shall develop a methodology for determining exemptions to the Land Use Plan and have jurisdiction for the approval or denial of exemptions.

8.4.5

Prior to the approval of an exemption to the Land Use Plan, the DCRMA shall consult the Dehcho Government.

8.4.6

Government, including the Dehcho Government and community governments, shall exercise any and all substantive and discretionary powers they may have in conformity with the approved Land Use Plan.

8.4.7

The Dehcho Land Use Plan will apply throughout the Dehcho Settlement Area, with the exception of Kue Zhagola Gondehe and national parks.

8.4.8

The provisions of the Dehcho Interim Measures Agreement shall remain in effect throughout the Dehcho Settlement Area. (explicitly list for clarity).

ARTICLE 9 - ADMINISTRATION OF JUSTICE

9.1 GENERAL PROVISIONS

9.1.1

The Dehcho Agreement will contain provisions expressing the will of the Parties to put in place, in an orderly and progressive manner, various measures in the field of the administration of justice. These measures will provide for, on the one hand, the establishment of a Dehcho justice system which shall be organized in accordance with the parameters described below and, on the other hand, the gradual putting into place of measures for the adaptation of the legal systems of Canada and the NWT to the reality and cultural practices of the Dehcho Dene.

9.1.2

It is agreed that the Parties shall examine, at the time of the first review of the Dehcho Agreement

provided for in Article , the possibility of enlarging the jurisdiction of the Dehcho courts in civil, penal and criminal matters.

9.2 DEHCHO JUSTICE SYSTEM

9.2.1

The Dehcho Agreement will provide that the Dehcho regional government may enact laws to provide for the constitution, maintenance and organization of a Dehcho Court, which shall be a court of first instance in charge of the administration of Dehcho laws.

9.2.2

The judicial institutions of the Dehcho shall respect the legal principles, guarantees and rights provided and recognized in the Canadian Charter of Rights and Freedoms concerning equity, independence and judicial impartiality.

9.2.3

The Dehcho Court may act as a court of appeal of the decisions rendered by the administrative bodies of Dehcho regional or community governments whose decisions are of a quasi-judicial nature. However, appeals of the decisions rendered by the Dehcho Court shall take place before the competent courts of the NWT.

9.2.4

In case of inconsistency or conflict between Dehcho laws and laws of general application of Canada in the matter of civil and penal procedure, the latter laws shall prevail to the extent of the inconsistency or conflict.

9.2.5

The regional or community governments of the Dehcho may implement alternative mechanisms for dispute resolution that may take the form of mediation, arbitration, non-judicial treatment or justice circles as well as mechanisms for the application of social reintegration programs, according to the provisions set out in the Dehcho Agreement.

9.3 JUSTICE SYSTEMS OF CANADA AND THE NWT

9.3.2

The Parties agree, in order to better adapt the legal system of Canada to the needs of the Dehcho Dene, to gradually put in place the following measures:

- a) The conduct, if deemed necessary, of court hearings in the various communities of the Dehcho;
- b) The raising of awareness of judges, lawyers and other stakeholders of the legal system to the realities of the Dehcho;
- c) The hiring and training, when possible, of Dehcho Dene in various responsibilities of the legal system;
- d) The cooperation of Dehcho community mechanisms responsible for assisting or advising the tribunal in the determination of sentences.

9.4 PUBLIC SAFETY

9.4.1

The Dehcho regional government may enact laws to constitute, maintain and organize a police force whose objective shall be in particular:

- a) To meet the needs and priorities of the Dehcho Dene;
- b) To apply and enforce Dehcho laws, the laws of the NWT, the criminal laws and the other laws of Canada within Dehcho Ndehe or outside this territory, according to the jurisdictions agreed upon in the Dehcho Agreement;
- c) To contribute to the administration of justice, to the maintenance of social order and to public safety.

9.5 CORRECTIONAL SERVICES, PROBATION SERVICES AND TERRITORIAL AGENTS

9.5.1

The Dehcho regional government may enact laws to constitute, maintain and organize a correctional service and a probation service. Mechanisms of harmonization with the corresponding services of Canada shall be developed.

ARTICLE 10 - FINANCIAL ARRANGEMENTS

10.1 CAPITAL TRANSFER

10.1.1

Canada shall pay to the Dehcho Regional Government, for the benefit of the Dehcho Dene, a capital transfer amount of \$310 million in accordance with the provisions to be set out in the Dehcho Agreement.

10.1.2

These amounts shall be adjusted to the date of the Dehcho Agreement, in accordance with the method used by Canada in similar matters and with the provisions to be set out in the Dehcho Agreement.

10.2 COMPENSATORY INDEMNITY

10.2

Canada shall pay \$XX to the Dehcho Regional Government, for the benefit of the Dehcho Dene, as an indemnity in the form of a capital transfer as a compensation for the past developments, including those related to forestry, mining and petroleum development.

10.3 TAX EXEMPTION AND IMMUNITY FROM SEIZURE

10.3.1

The capital transfer payments provided in this Agreement will not be subject to any taxation, charge, fees or levy and are not subject, without the consent of the Dehcho Dene, to liens, mortgages or other charges, oppositions, levy or seizures.

10.4 LOAN REPAYMENT

10.4.1

The Dehcho Dene and Canada shall agree in the Dehcho Agreement upon the terms and conditions of repayment of the Dehcho share of loans which the Dene/Métis Claims Secretariat contracted with Canada for the purposes of negotiations.

ARTICLE 11 - ELIGIBILITY CRITERIA

11.1.1

The Dehcho Agreement will provide that all Dehcho Dene will be entitled to enrolment.

11.1.2

A person who is not a Dehcho Dene will be entitled to be enrolled through a "community acceptance" process if he or she is a Canadian Citizen resident in the Dehcho Territory and accepted by the community at any time up to two years following the date of Dehcho Agreement legislation. Acceptance by the community means that a person was sponsored by a Dehcho Dene and was approved by a majority of Dehcho Dene voting in the specific Dehcho community.

11.2 INITIAL ENROLMENT

An initial enrolment will begin no later than one month following the signing of the AiP and will be completed prior to the ratification of the Dehcho Agreement.

11.3 MEANING OF ENROLMENT UNDER THE DEHCHO AGREEMENT

11.3.1

Enrolment under the Dehcho Agreement:

- a) Shall not confer or deny the rights of entering Canada, Canadian citizenship, the right to be registered as an Indian under the *Indian Act*, or any other right or benefit under the *Indian Act*;
- b) Except as stated in the Dehcho Agreement or any other law of Canada or the NWT, shall not impose any obligation on Canada or the NWT to grant rights or benefits.

11.4 OTHER LAND CLAIMS AGREEMENT

11.4.1

An individual who is enrolled under another land claims agreement in Canada may not at the same time be enrolled under the Dehcho Agreement.

11.4.2

An individual enrolled under another land claims agreement in Canada may apply to enrol under the Dehcho Agreement, but if his or her application is accepted, that individual must withdraw from enrolment under the other land claims agreement.

11.5 APPLICATIONS

11.5.1

An individual may, on his own behalf, or on the behalf of a minor, or of an adult whose affairs he has the legal authority to manage:

- a) Apply to the Enrolment Committee for enrolment as a Dehcho Dene;
- b) Appeal a decision of the Enrolment Committee to the Enrolment Appeal Board;
- c) Seek judicial review of a decision of the Enrolment Appeal Board.

11.6 ENROLMENT COMMITTEE

11.6.1

The Enrolment Committee is a committee established by the Dehcho First Nations and governed by enrolment rules adopted by them.

11.6.2

The Enrolment Committee shall be established by the DFN not later than fifteen days following the entering into force of the Dehcho Agreement. The Enrolment Committee shall be comprised of four members selected according to the terms and conditions to be defined by the Parties prior to the signing of the Dehcho Agreement.

11.6.3

The Enrolment Committee shall establish and publish its own rules of procedure.

11.7 ENROLMENT APPEAL BOARD

Appeals

Establishment of the Enrolment Appeal Board

11.7.1

On the effective date of the Dehcho Agreement, the Dehcho Dene will establish the Enrolment Appeal Board, the composition of which is to be determined.

11.7.2

The Enrolment Appeal Board shall establish its own procedure and time limits.

11.7.3

An applicant, a Party or a Dehcho community may appeal to the Enrolment Appeal Board any decision of the Enrolment Committee on the enrolment of an applicant.

11.8 JUDICIAL REVIEW

11.8.1

The decision of the Enrolment Appeal Board may be subject to a judicial review before an appropriate judicial authority in any one of the following cases:

- a) If it acted without jurisdiction, refused to exercise its jurisdiction or acted beyond it;
- b) If it did not respect the rules of natural justice;
- c) If the decision is tainted with an error of law, whether or not manifest on the face of the record;
- d) If it based its decision on an erroneous finding of fact drawn in an abusive or arbitrary manner or without regard to elements before it.

11.8.2

The judicial authority hearing the case in application of section 14.7.1 may dismiss the application for judicial review or set aside the decision of the Enrolment Appeal Board and refer the case back to the Enrolment Appeal Board so that it may make a decision in compliance with the judicial authority's instructions.

11.8.3

If the Enrolment Appeal Board refuses to hear or decide an appeal or omits to do so, the appellant, the applicant or the Party may apply to the appropriate judicial authority to obtain an order requiring the Enrolment Appeal Board to hear or decide the appeal in accordance with the judicial authority's instructions.

11.8.4

The application for judicial review must be made within forty-five days of service of the decision of the Enrolment Appeal Board.

11.9 FINANCING

During the initial period, Canada shall assume the costs related to eligibility and enrolment as well as the expenses of the Enrolment Committee and the Enrolment Appeal Board.

ARTICLE 12 - RATIFICATION OF AGREEMENTS

12.1

After initialling the Dehcho Agreement, the Chief Negotiators of the parties shall seek ratification.

12.2

In the case of the Dehcho Dene, the ratification of the Dehcho Agreement first be approved by an Assembly and then be ratified by enrolled Dehcho Dene in a referendum in which a majority of those voting in the referendum indicate their support for the Agreement.

12.3

In the case of Her Majesty the Queen in Right of Canada, ratification shall be by signature by a Minister of the Crown as soon as possible after initialling of the Agreement and ratification by the Dehcho Dene.

12.4

This AiP will be ratified by a Dehcho Assembly.

ARTICLE 13 – IMPLEMENTATION PLAN

13.1 IMPLEMENTATION PLAN

13.1.1

The Dehcho Agreement will provide for an implementation plan.

13.1.2

The implementation plan shall deal in particular with the following items:

- For each obligation, undertaking, activity and project, identify what must be carried out, including the responsibilities to be assumed by each Party;
- Determine the measures necessary for the execution of each obligation, undertaking, activity and project;
- Give priority to enrolled Dehcho Dene in the carrying out of tasks arising out of the Dehcho Agreement;
- Indicate the terms of financing required for the implementation of the Dehcho Agreement during an initial period, to be determined by the Parties prior to the signing of the Dehcho Agreement, following its ratification;
- In the establishment of this financing, take into consideration the objectives the Parties may agree upon, prior to the signing of the Dehcho Agreement; and
- Include a communications strategy directed at making the public aware of the contents of the Dehcho Agreement.

13.2 IMPLEMENTATION COMMITTEE

13.2.1

Within forty-five days following the signing of the Dehcho Agreement, a Dehcho Agreement implementation committee shall be constituted.

13.2.2

The composition, operating procedure and responsibilities of the implementation committee shall be determined by the Parties as soon as possible following the signing of the Dehcho Agreement.

13.2.3

The implementation committee shall have in particular the following duties:

- Supervise the implementation of the Dehcho Agreement;

- When it considers it necessary, review the timetable or allocation of resources within the implementation plan after having obtained the consent of the Parties to the implementation plan when such a review calls for an amendment to the implementation plan;
- Prepare an annual public report regarding the implementation of the Dehcho Agreement and the issues of concern to the members of the committee;
- Monitor the application of the implementation plan and ensure that the obligations, undertakings, activities and projects are implemented in accordance with the plan;
- Except if the members of the committee agree upon another time limit, effect a study on the application of the implementation plan at the end of the first period of five years;
- Make recommendations to the Parties as regards the financing necessary for the implementation of the Dehcho Agreement with a view to the renewal of a financing agreement.

13.2.4

The implementation plan shall provide for the costs relating to the implementation and the sharing of responsibilities and obligations between the Parties.

13.3 IMPLEMENTATION TRAINING

13.3.1

Canada, the DFN and the GNWT will complete and implement a *Capacity Building and Training Agreement (CBTA)* to ensure that DFN members are able to fully benefit from employment opportunities arising from implementation of the Agreement. The Parties agree to use best efforts to complete and implement the CBTA as soon as possible, and in any event prior to the initialling of the Dehcho Agreement.

13.3.2

Upon the ratification of this agreement, given the utmost importance of building the capacities of the Dehcho Dene, the Parties shall conduct a preliminary study on the training needs of the Dehcho Dene as regards the implementation of the Dehcho Agreement.

13.3.3

The Parties shall strive to fully use existing programs to fulfill these needs so as to allow the Dehcho Dene to benefit from the economic impacts arising from the Dehcho Agreement as soon as it comes into effect. If needed, the Parties shall endeavour to reorient programs in order to attain this objective.

ARTICLE 14 - DISPUTE RESOLUTION

14.1 GENERAL PROVISIONS

14.1.1

The Parties shall undertake in the Dehcho Agreement to attempt to settle their disputes in a spirit of reconciliation, cooperation and harmony.

14.1.2

The Parties shall favour the settlement of disputes through informal discussions without having to resort to the provisions of this article.

14.1.3

In the application of the provisions of this article, the Parties shall undertake to negotiate in good faith and make all reasonable efforts to find a solution to their dispute.

14.2 APPLICATION

14.2.1

This article applies to the settlement of any dispute which arises in the application and interpretation of the Dehcho Agreement, unless the latter contains different provisions.

14.2.2

This chapter also applies to any dispute arising in the application and interpretation of a complementary agreement to the extent the agreement so provides.

14.2.3

The Dehcho Agreement and complementary agreements may provide time limits that are different from those provided for in this article.

14.3 JOINT REVIEW

14.3.1

If a dispute is not resolved through informal discussion, a Party may resort to the joint review procedure provided for in sections 13.3.2 to 13.3.11.

14.3.2

The joint review of the dispute by the Parties concerned shall be conducted by the joint committee provided for in the Dehcho Agreement or provided for, if any, in a complementary agreement or, failing that, by an ad hoc committee composed equally of representatives of each of the Parties affected by the dispute.

14.3.3

The joint review procedure shall be initiated by a notice in writing transmitted by the Party requiring it. This notice shall specify the object of the dispute and the relevant provisions of the Dehcho Agreement or of the complementary agreement. It shall also contain a summary of the facts relating to the dispute according to the Party sending the notice as well as the conclusions that party seeks.

14.3.4

The joint review procedure shall commence within ten days following the transmission of the notice.

14.3.5

The Parties participating in the joint review procedure shall exchange all information necessary to attempt to settle the dispute.

14.3.6

During the joint review, a Party may request that a technical opinion be sought from an independent third party. The Parties shall then attempt to agree on the selection of this expert, failing which, each Party may request the technical opinion from an independent expert of its choice.

14.3.7

The expert shall provide his technical opinion within fifteen days, unless the Parties agreed on another time limit.

14.3.8

Where the dispute deals with an issue intimately related to the Dehcho Dene culture or heritage, a Party may request the opinion of Elders. This opinion shall be provided *within fifteen days*, unless the Parties agreed on another time limit.

14.3.9

The joint review procedure shall terminate when one of the following events occurs:

- The Parties agree on a settlement of the dispute;
- One of the Parties resorts to mediation;
- Sixty days have elapsed since the initial application for joint review, unless the Parties agreed to extend this time limit.

14.4 MEDIATION

14.4.1

Within fifteen days following the completion of the joint review procedure, a Party may request that the dispute be submitted to mediation.

14.4.2

Mediation shall be entrusted to the person who has been selected by mutual agreement of the Parties to act as mediator under this article. The Parties may however agree to entrust mediation of a dispute to another person.

14.4.3

The mediator shall meet the Parties within fifteen days to assist them in settling the dispute.

14.4.4

The Parties to the mediation procedure shall make available to the mediator all relevant information to facilitate mediation. The Parties to mediation and the mediator shall protect the confidentiality of all confidential information or documents.

14.4.5

Mediation may not last more than fifteen days, unless the Parties to the dispute and the mediator agree otherwise.

14.4.6

The mediator may, of his own initiative, or at the request of one or more of the Parties, issue to the Parties one or more non-binding recommendations.

14.4.7

The mediation procedure shall be without prejudice to the rights and claims of the Parties.

14.4.8

If, following the recommendation of the mediator, the Parties agree upon a settlement, they shall give effect to it as expeditiously as possible.

14.5 ARBITRATION

14.5.1

Recourse to arbitration will be limited to those cases which are expressly provided for in the Dehcho Agreement or upon which the Parties have agreed to resort to arbitration.

14.5.2

In the case where arbitration deals with the determination of compensation with respect to a development project, the proponent and the affected Dehcho community shall be the Parties to the arbitration. They shall select an arbitrator from the list provided for in article xx.

14.5.3

The Parties to a dispute submitted to arbitration shall, within fifteen days of the referral, attempt to

select an arbitrator from a list that the Parties to the Dehcho Agreement shall have previously established. If the Parties cannot agree on the selection of the arbitrator, they shall apply to the Chief Justice of the Supreme Court of the NWT so that he may appoint an arbitrator from that list.

14.5.4

The provisions of the *Arbitration Act (NWT)* shall apply with the appropriate adaptations to the arbitration provisions of the Dehcho Agreement.

14.5.6

An arbitration award shall be final and shall bind the Parties.

14.5.7

A Party may, however, apply to the Supreme Court of the NWT for a judicial review of the arbitration award on the grounds that the arbitrator acted without jurisdiction, exceeded his jurisdiction, refused to exercise his jurisdiction, has not observed procedural fairness, rendered a decision tainted with an error in law or based his decision on an erroneous finding of facts drawn in an abusive or arbitrary manner.

14.6 JUDICIAL PROCEEDINGS

14.6.1

A Party may not commence judicial proceedings before the Supreme Court of the NWT on a dispute until after the procedures of joint review and mediation provided for in this article have been exhausted.

14.7 COSTS

14.7.1

Except as provided in the Dehcho Agreement, each Party shall bear its costs relating to the application of this article. The Parties shall equally share the other costs.

ARTICLE 15 - DEHCHO MÉTIS

15.1

The Dehcho Agreement will ensure that any legal distinctions or program access distinctions between Dehcho Dene on the basis of *Indian Act* status are eliminated.

ARTICLE 16 – TAXATION

16.1

The Dehcho Agreement will provide that the government of the Dehcho is the only government with the authority to tax Dehcho Dene within Dehcho Ndehe. The government of the Dehcho will also have the authority to tax residents of Dehcho Ndehe, including corporations carrying out business within Dehcho Ndehe.

ARTICLE 17 – OTHER MATTERS

17.1

The Dehcho Agreement will provide that the Dehcho government will receive and disburse funds through annual block funding for education, housing and health benefits, as required by Treaties 8 and 11. (Need to ensure equal access for Dehcho Métis)

17.2

The Dehcho Agreement will contain provisions for funding for Dene language and cultural

programs and healing programs, as well as a harvesters' support program and a long term economic development fund.

17.3

The Dehcho Agreement will provide that the *Indian Act (Canada)* will no longer apply in or to the Dehcho.

17.4

The Dehcho Agreement shall not affect the specific land claims of a Dehcho First Nation community submitted as part of the policies of Canada prior to the signing of the Dehcho Agreement. The specific land claims shall be dealt with in accordance with the policies of Canada regardless of the provisions of the Dehcho Agreement.

Dehcho First Nations

Negotiations Update June 2007



Background

- There are two distinct versions of Treaties 11 and 8 – Canada says the treaties extinguished Dene title to land, but the DFN say they were peace treaties which did not affect Dene ownership of land
- Uncertainty exists because there is a dispute about who owns the land
- The Dene/Metis negotiations of the 1980s resulted in an agreement-in-principle based on land selection – in 1990 the Dene Nation, including DFN, rejected the agreement because it would extinguish aboriginal title to the land and because the agreement did not provide for self-government
- In 1995 the DFN tabled the Dehcho Proposal which offers to resolve uncertainty through public government and Dehcho ownership of all lands and resources instead of land selection; later the DFN proposed “shared stewardship” of all lands and resources

- **Canada rejected the Dehcho Proposal but agreed to appoint Peter Russell as Ministerial Envoy. Russell consulted DFN communities and Canada produced a report called the 21 Common Ground Principles which formed the basis for beginning the Dehcho Process negotiations in 1999**
- **In 2001 Canada, the GNWT and DFN signed a Framework Agreement and an Interim Measures Agreement (IMA)**
- **The Framework Agreement incorporates the 21 Common Ground Principles and says that the DFN and the Crown will negotiate a Dehcho Agreement which recognizes a public government, based on Dene laws and customs**
- **The Dehcho Public Government would be the primary government for all residents of the Dehcho.**

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- **The Framework Agreement also says that the Dehcho final agreement will “build upon and clarify” existing treaties, but not replace them.**
- **The IMA provides for joint decision making on lands and resources until a Dehcho final agreement is reached. It also established the Dehcho Land Use Planning Committee and lists criteria for interim land withdrawals to protect sensitive lands from development**
 - **The Land Use Planning Committee has representatives from DFN, Canada and GNWT.**
 - **Extensive consultations with Dehcho communities and stakeholders have been done over the last 6 years.**

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- In July 2005, Canada and DFN signed an agreement to implement the plan "as soon as possible" after its completion.
- The Plan was completed in June, 2006 after input from all governments and stakeholders.
- The Dehcho Land Use Plan was ratified at the 2006 Dehcho Annual Assembly.
- In Fall 2006, Canada's negotiators refused to implement the Plan. They claimed it "protects too much land" but refused to identify any areas that should not be protected.
- Canada informed DFN that they would not approve it unless it is tied to an AiP in the Dehcho Process, based on land selection.
- Canada and the DFN have now agreed to a timetable for revising the Plan and approving the revised Plan by early 2008.

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- In 2003 Canada and the DFN signed a package of interim land withdrawals and an Interim Resource Development Agreement (IRDA)
- The interim land withdrawals will expire in October 2008 unless they are renewed through an Order in Council by Canada.
- Edehzhie (Horn Plateau) is currently protected under the Protected Area Strategy (PAS). The Order in Council is due to expire June 30th, 2007 (IN A FEW DAYS!!)
- In fall, 2005 Canada's negotiators informed the DFN that Canada would only negotiate an agreement based on land selection, and that the DFN agreement must be "comparable" to other NWT final agreements

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General Agreement-in-Principle (GAiP)

- The Dehcho First Nations special assembly in November, 2006 instructed the negotiating team to explore the Federal offer based on Canada's comprehensive claims policy.
- A land selection model is very different from the model of shared stewardship in the Dehcho Proposal. Under the Dehcho Proposal land would not be divided into parcels owned by the Dehcho and other land owned by Canada.
- The DFN, Canada and the GNWT are now in exploratory discussions to see whether an agreement based on land selection could be acceptable to DFN

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- The Land Use Planning Committee is now beginning to develop possible revisions to the Land Use Plan which was approved by DFN last year
- It is hoped that negotiations will produce a complete AiP and a complete Land Use Plan in time for a February 2008 Special Assembly
- DFN negotiators tabled a draft General Agreement-in-Principle (GAiP) in April, 2007. The draft GAiP outlines how a Dehcho Final Agreement could be achieved under Canada's land selection policy. It describes the powers which a Dehcho government would have over lands which would be owned by the Dehcho.

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- The AIP tabled by the DFN includes:
 - ✓ process and criteria for enrolment;
 - ✓ definition of 'Dehcho Dene';
 - ✓ powers of Dehcho regional government and local community governments;
 - ✓ continued land use planning;
 - ✓ quantum of land to be owned by Dehcho government and local community governments;
 - ✓ taxation of Dehcho citizens and non-Dene on Dehcho lands would be exclusive to the Dehcho government;
 - ✓ proposal to harmonize the relationship between Dehcho Resource Management Authority and MBRMA boards;

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- ✓ financing of Dehcho governments;
- ✓ ratification of agreements;
- ✓ protection of language and culture;
- ✓ certainty and the recognition of aboriginal rights;
- ✓ equality between Métis and status Dene;
- ✓ building upon and clarifying Treaties 11 and 8 (e.g. education, housing, programs and services, hunting, fishing and harvesting rights);
- ✓ a Dehcho Justice system including courts, policing and corrections.

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Dehcho Land Use Plan

- The Interim Measures Agreement signed in 2001 established a Dehcho Land Use Planning Committee. The Committee has representatives from DFN, Canada and GNWT.
- Extensive consultations with Dehcho First Nation communities have been done over the last 6 years.
- In July 2005, Canada and DFN signed an agreement to implement the plan "as soon as possible" after its completion.
- The Plan was completed in June, 2006 after input from all governments stakeholders.
- The Dehcho Land Use Plan was ratified at the 2006 Dehcho Annual Assembly

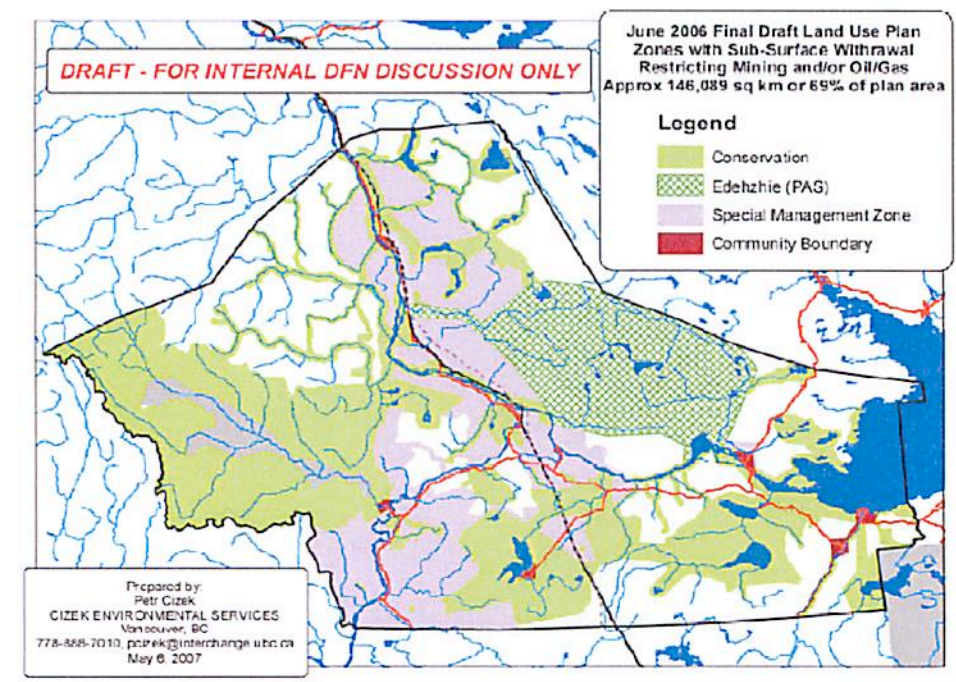
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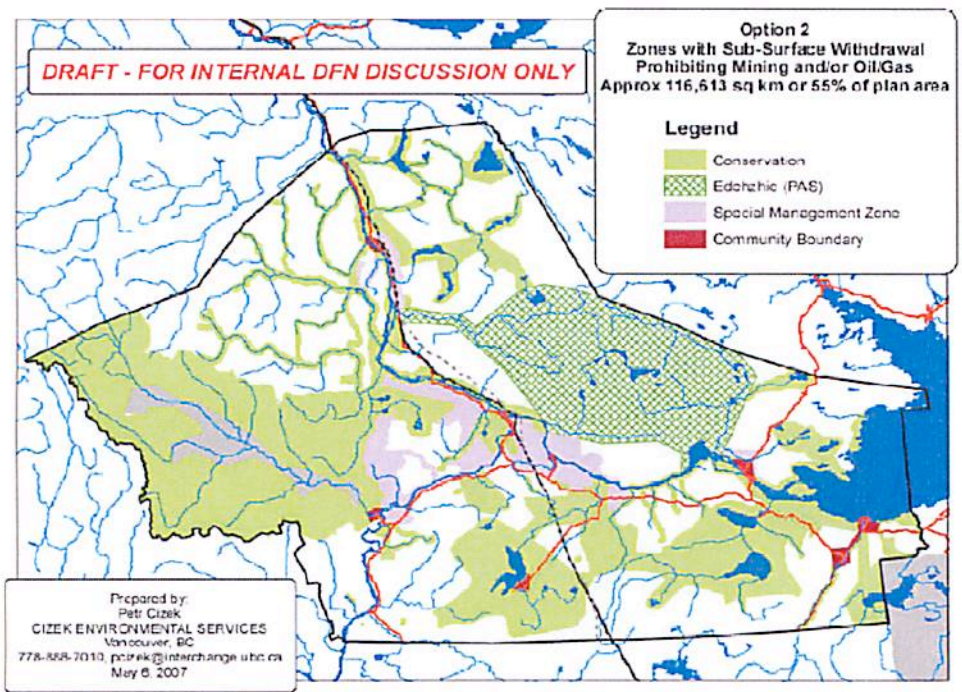
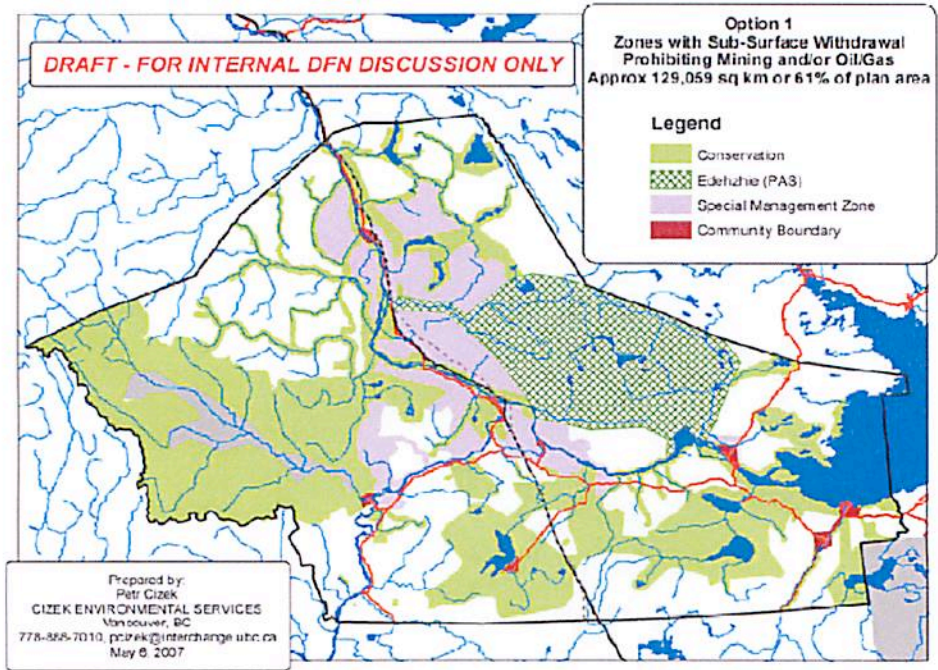
- In Fall 2006, Canada's negotiators refused to implement the Plan. They claimed it "protects too much land" but refused to identify any areas that should not be protected.
- April 2007, Terms of Reference were signed by all parties to revise the DLUP
- New appointees for Dehcho Land Use Planning Committee appointed:
 - Ⓞ Mike Nadli suggested by DFN and Canada as Chair
 - Ⓞ DFN will keep Petr Cizek and Tim Lennie as appointees
 - Ⓞ Effective June 17th, Bob Overvold was appointed by the Crown.
 - Ⓞ Mark Warren has been appointed by the GNWT

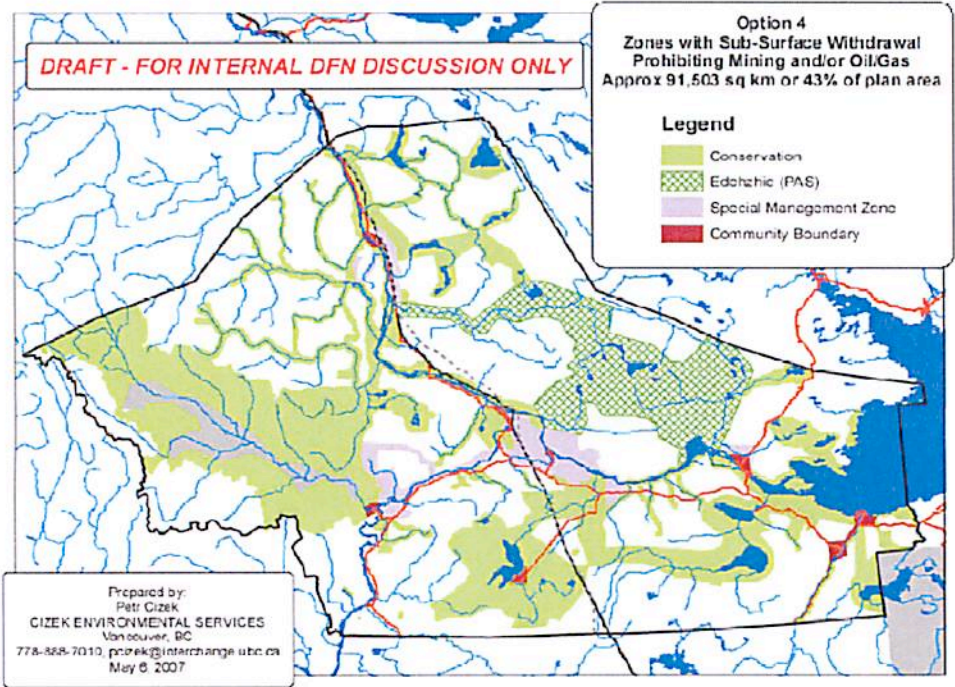
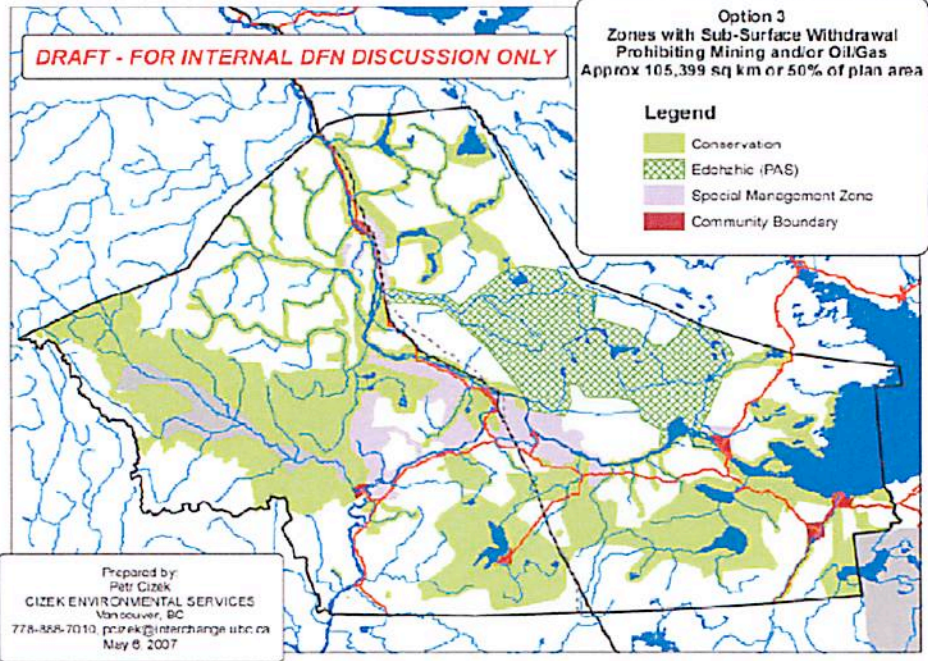
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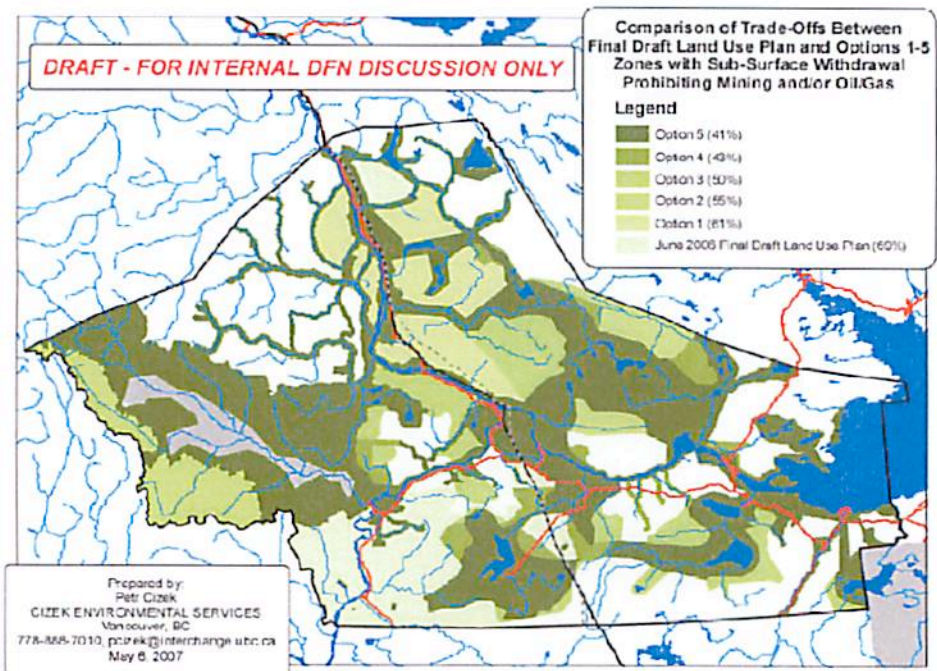
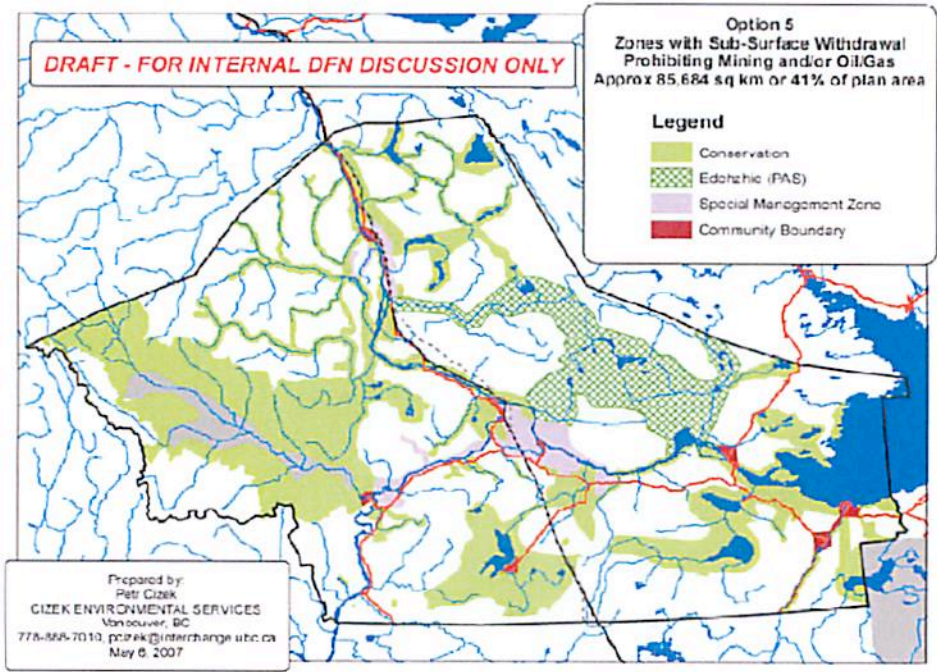
Possible Revisions to the Dehcho Land Use Plan

- There will be a presentation of possible revisions to the Dehcho Land Use Plan after the Negotiations report.
- Maps reflecting possible options have been developed by Dehcho First Nations for consideration by the membership.
- The DFN negotiations team had maps developed reflecting different percentages of conservation lands for discussion purposes.









Mahsicho,
Dehcho First Nations Negotiation

