

With Proposed Federal Changes
For Discussion Oct 6-7, 2011 Video Conference

Deleted: To be reviewed at Main Table session
Nov 30 – Dec 2, 2009¶
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CHAPTER A: ACCESS

- PART I GENERAL**
- PART II PUBLIC ACCESS**
- PART III ACCESS BY HOLDERS OF EXISTING INTERESTS**
- PART IV COMMERCIAL ACCESS**
- PART V GOVERNMENT ACCESS**
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- PART VIII WINTER ROAD ACCESS**
- PART VIV SURFACE RIGHTS BOARD**
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Comment [f1]: Access by other Aboriginal Peoples removed, as we will want this to be covered off in the General Provisions (ie. ongoing s.35 rights of other Aboriginal peoples)

PART I GENERAL¹

- A.1.1 “**Dehcho Ndehe**” means, for the purposes of this chapter, the Dehcho Settlement Land and waters overlying such land.
- A.1.2 Where a Person may exercise access under more than one provision in this chapter, that Person may have access pursuant to the least restrictive provision.
- A.1.3 Nothing in this Agreement affects the public right of navigation.²
- A.1.4 Any Person may access the Dehcho Ndehe without prior notice in an emergency.³

PART II PUBLIC ACCESS

A.2.0 GENERAL

¹ The DFN believe that the provisions of this chapter should reference the Dehcho Land Use Plan.

² Will Navigation be a defined term? If so, how?

³ Will Emergency be a defined term? If so, need consistency with respect to other chapters including harvesting chapters.

- A.2.1 ~~Any Person has the right~~ to enter, cross or stay temporarily on the Dehcho Ndehe subject to:
- a) conditions and restrictions set out in A.3.0;
 - b) additional conditions which may be made in accordance with A.4.0;
 - c) conditions which result from a resolution or determination under the Dispute Resolution chapter; and
 - d) Legislation.⁴
- A.2.2 Any Person exercising access to the Dehcho Ndehe under A.2.1 may⁵:
- a) harvest Wildlife, ~~Migratory Birds~~ and Fish; and
 - b) employ any ⁶mode of transport.
- A.2.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under A.2.1; and
 - b) any cost incurred by the Dehcho Government in relation to access under A.2.1.
- unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.⁷
- A.2.4 There is no permitting, licensing or screening required for access under A.2.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.⁸

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⁴ DFN propose: "...Legislation enacted by the Dehcho Government after consultation with Canada".

⁵ DFN suggest "...under A.2.1 may, with the consent of the Dehcho Government, ..."

⁶ DFN propose: "...any *necessary* mode of transport."

⁷ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada".

⁸ The DFN propose the following alternative wording: "...unless otherwise provided by Legislation enacted by the Dehcho Government after consultation with Canada."

A.2.5 Any Person exercising access under A.2.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law⁹ applying to trespassers on fee simple land will apply to such Person.

A.3.0 CONDITIONS AND RESTRICTIONS

A.3.1 Unless otherwise agreed to by any Person and the Dehcho Government, a Person accessing the Dehcho Ndehe under A.2.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent¹⁰ action of the Dehcho Government or any Dehcho Citizen.

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A.3.2 Access under A.2.1 will, where practicable¹¹, be exercised:

- a) upon prior notice to the Dehcho Government;
- b) on a route identified for that purpose by the Dehcho Government; or on an existing route used regularly for such access.

¹².

Deleted: c) on an existing route used regularly for such access

A.3.3 Unless otherwise agreed to by the Dehcho Government, a Person exercising access under A.2.1 is subject to conditions that the Person:

- a) is responsible for unnecessary damage caused to Dehcho Ndehe or structures on the Dehcho Ndehe; and
- b) does not unnecessarily interfere with the use and peaceable enjoyment of the Dehcho Ndehe by the Dehcho Government or a Dehcho Citizen.

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A.3.4 Public access under A.2.1 does not include the right to:

- a) engage in any commercial activity;

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⁹ Or Trespass Act enacted by the Dehcho Government.

¹⁰ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

¹¹ DFN suggest "possible" instead of "practicable".

¹² DFN believe this wording creates uncertainty and suggest that "existing routes" be identified on a map to be attached to the Dehcho Agreement.

- b) establish any permanent or seasonal Camp¹³; or
- c) establish any permanent or seasonal¹⁴ structure.

A.4.0 ADDITIONAL CONDITIONS BY AGREEMENT¹⁶

A.4.1 The Dehcho Government may propose to the Government of Canada and the Government of the Northwest Territories additional conditions on access to the Dehcho Ndehe under A.2.1 provided such conditions pertain only to:

- a) requirements for notice or registration by Persons accessing Dehcho Ndehe; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
 - i) protect the environment;
 - ii) conserve Wildlife, Fish, Migratory Birds or their habitats;
 - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of the Dehcho Ndehe by Dehcho Citizens; and
 - iv) protect Camps or structures.

A.4.2 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement on an additional condition proposed under A.4.1, the Dehcho Government may refer the dispute for resolution or determination under the Dispute Resolution chapter.

A.4.3 The Dehcho Government will take reasonable measures to notify the public of additional conditions which may be established under A.4.1. or A.4.2.

¹³ Is Camps intended to include Dene hunting camps?

¹⁴ Is this intended to prohibit temporary seasonal Camps, or permanent Camps?

¹⁶ Sections 4.1 – 4.4 are unnecessary if, as the DFN propose, the Dehcho Government has exclusive or paramount jurisdiction to enact legislation governing access to Dehcho Ndehe.

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A.4.4 Additional conditions on access under A.2.1 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

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PART III ACCESS BY HOLDERS OF EXISTING INTERESTS
A.5.0 GENERAL

A.5.1 The holder of:

- a) an interest¹⁷ in an excluded parcel set out in Appendix “X” including its renewal or replacement;
- b) an interest set out in Appendix “X”, including its renewal or replacement; or
- c) a land use permit granted by the Mackenzie Valley Land and Water Board before the Effective Date,

has a right to enter, cross or stay temporarily on Dehcho Ndehe to allow the exercise of that interest, subject to the conditions and restrictions set out in A.6.0.

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A.5.2 The right of access under A.5.1 extends to any employee, client, agent or guest of the interest holder.

A.5.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under A.5.1; and
- b) any cost incurred by the Dehcho Government in relation to access under A.5.1,

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.¹⁸

¹⁷ “Interest” should be defined. Does it include prospecting permits and mineral claims?

¹⁸ DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada”.

- A.5.4 There is no additional permitting, licensing or screening required for access under A.5.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.
- A.5.5 An interest holder exercising access to the Dehcho Ndehe under A.5.1 may employ any¹⁹ mode of transport.
- A.5.6 An interest holder exercising access under A.5.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person.²⁰

A.6.0 CONDITIONS AND RESTRICTIONS

- A.6.1 Unless otherwise agreed to by the Dehcho Government, holders of existing interests who access the Dehcho Ndehe under A.5.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent²¹ action of the Dehcho Government or any Dehcho Citizen.
- A.6.2 Access under A.5.1 will be exercised in a manner that is consistent with the terms and conditions of the existing interest
- A.6.3 Where the exercise of the right of access under A.5.1 involves any activity of a type or in a location not authorized by the existing interest on the Effective Date of the Final Agreement, the exercise of that right of access is subject to the agreement of the Dehcho Government.²²
- A.6.4 Where an agreement is not reached under A.6.3, the holder of the existing interest may refer the dispute for resolution or determination under the Dispute Resolution chapter, but may not exercise access **with respect to the disputed activity** until the dispute has been resolved or determined.²³

¹⁹ DFN propose: "...any *reasonable* mode of transport".

²⁰ DFN propose also to make unauthorized access subject to prosecution under any *Trespass Act* enacted by the Dehcho Government.

²¹ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

²² Or "subject to terms imposed by the DCRMA."

²³ DFN propose to reference DCRMA.

A.6.5 The right of access under A.5.1 is subject to any restrictions or prohibitions established by Legislation.²⁴

PART IV COMMERCIAL ACCESS

A.7.0 GENERAL

A.7.1 Any Person has, for travel by water in the course of conducting commercial activity, a right to enter, cross or stay temporarily on or over:

- Navigable rivers that overlie Dehcho Ndehe and other Navigable waters that overlie Dehcho Ndehe that can be entered from a navigable river;
- Portages on Dehcho Ndehe associated with Navigable rivers and other Navigable Waters; and
- Dehcho Ndehe that is Waterfront Land.

A.7.2 ~~Any Person has a right to enter, cross or stay temporarily on or over Dehcho Ndehe and Waters overlying Dehcho Ndehe to reach adjacent lands or Waters for commercial purposes.~~

A.7.3 Access under A.7.1 and A.7.2 is subject to:

- conditions and restrictions set out in A.8.0;
- additional conditions which may be made in accordance with A.9.0;
- additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- Legislation²⁶.

A.7.4 Any Person exercising access under A.7.1 and A.7.2 may employ any²⁷ mode of transport.

A.7.5 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

²⁴ DFN propose: "Legislation enacted by the Dehcho Government".

²⁶ DFN propose: "Legislation enacted by the Dehcho Government".

²⁷ DFN propose: "...any *reasonable* mode of transport".

Deleted: A.7.1 In this subsection, "Dehcho Ndehe" means:¶

- . Dehcho Ndehe²⁵ and Waters overlying such lands;¶
- . Navigable rivers and other Navigable Waters that can be entered from such rivers where such Waters overlie Dehcho Ndehe;¶
- . portages on Dehcho Ndehe associated with Navigable rivers and other Navigable Waters that can be entered from such rivers; and¶
- . Waterfront Lands within Dehcho Ndehe associated with Navigable rivers and other Navigable Waters that can be entered from such rivers.¶

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- a) access under **A.7.1 or** A.7.2; and
- b) any cost incurred by the Dehcho Government in relation to access under **A.7.1 or** A.7.2.

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.²⁸

A.7.6 There is no permitting, licensing or screening required for access under **A.7.1 or** A.7.2 unless otherwise provided by:

- a) existing Legislation; or
- b) Legislation enacted after Consultation with the Dehcho Government.²⁹

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A.7.7 Any Person exercising access under **A.7.1 or** A.7.2 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person.³⁰

A.8.0 CONDITIONS AND RESTRICTIONS

A.8.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing the Dehcho Ndehe under A.7.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent³¹ action of the Dehcho Government or any Dehcho Citizen.

A.8.2 Access under A.7.2 must be exercised:

- a) by using the most direct route³²; and
- b) by minimizing use of portages and Waterfront Lands.

²⁸ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada".

²⁹ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada".

³⁰ DFN propose also to make unauthorized access subject to prosecution under any *Trespass Act* enacted by the Dehcho Government.

³¹ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

³² DFN propose: "...most direct *existing* route."

- A.8.3 Access to portages and Waterfront Lands under A.7.1;
- a) is subject to prior notice being given to the Dehcho Government;
and
 - b) does not include the right:
 - i) to engage in any commercial activity, other than an activity that is necessarily incidental to travel; or
 - ii) to establishing any permanent or seasonal³³ Camp or structure.

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- A.8.4 Access to Dehcho Ndehe under A.7.2 is subject to:
- a) the access being of a casual and insignificant nature;
 - b) prior notice given to the Dehcho Government;
 - c) the route having been previously used for similar commercial access on a regular basis, whether year round or intermittently;
and
 - d) the access not resulting in a significant alteration in the use of the route.

- A.8.5 Unless otherwise agreed to by the Dehcho Government, a Person exercising access under A.7.2 is subject to conditions that the Person:
- a) does not cause unnecessary damage to Dehcho Ndehe or structures on the Dehcho Ndehe, and is responsible for any such damage;
 - b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Settlement Land by the Dehcho Government or a Dehcho Citizen.

A.9.0 ADDITIONAL CONDITIONS BY AGREEMENT

³³ Is this intended to restrict temporary and permanent seasonal Camps?

- A.9.1 Where a Person exercising access under A.7.1 or A.7.2 is unable to comply with the conditions set out in A.8.0, that Person requires the agreement of the Dehcho Government as to any variation of those conditions.
- A.9.3 If the Person exercising access under A.7.1 or A.7.2 and the Dehcho Government cannot agree on a variation to the conditions set out in A.8.0, the Person with the right of access may refer the dispute for resolution under the Dispute Resolution chapter, and may only continue to exercise access under the terms and conditions set out in A.8.0.
- A.9.4 The Dehcho Government may propose³⁶ to the Government of Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe under A.7.2 provided such conditions pertain only to:
- a) requirements for notice or registration by any Person accessing under A.7.1 or A.7.2; or
 - b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
 - i) protect the environment;
 - ii) conserve Wildlife, Fish Migratory Birds or their habitats;
 - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe by Dehcho Citizens; and
 - iv) protect Camps or structures.
- A.9.5 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement on an additional condition proposed under A.9.3, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.
- A.9.6 The Dehcho Government will take reasonable measures to notify the public of any additional conditions which may result under A.9.1 or A.9.4.

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A.9.2 A Person requiring variation of any condition will propose that variation in writing to the Dehcho Government. Upon proposal of a variation in accordance with this section, the Person proposing the variation and the Dehcho Government will enter into negotiations with respect to the proposed variation.³⁴ ¶

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³⁶ 9.3 and 9.4 are unnecessary if the Dehcho Government has exclusive or paramount jurisdiction to enact Legislation

A.9.7 Additional conditions under A.9.1 may be established by agreement between the Dehcho Government and the Person with whom such conditions on access would apply.

PART V GOVERNMENT ACCESS

A.10.0 GENERAL

A.10.1 ³⁷Agents, employees, contractors of the Government of Canada and the Government of the Northwest Territories, including Law Enforcement Officers, Peace Officers, members of the Canadian Forces including ~~members of foreign armed forces services with or under the operational control of the Canadian Forces,~~ have a right to enter, cross or stay on the Dehcho Ndehe ~~including Waters overlying Dehcho Ndehe~~ and to use natural resources incidental³⁸ to such access to:

- a) deliver and manage Government of Canada and Government of the Northwest Territories programs and services;
- b) carry out duties under the Laws of Canada and the Northwest Territories including law enforcement, investigations, inspections and crime prevention;
- c) respond to emergencies; or
- d) address other public safety and security matters.

A.10.2 When exercising access under A.10.1 ~~the Government of Canada and the Government of the Northwest Territories may establish on the Dehcho Ndehe:~~

- a) navigational aids and safety devices along the shorelines of Navigable Waters prior to the start of a navigation season, provided that the area occupied by each such navigational aid or safety device does not exceed:
 - i) two hectares, for range markers and buoy transits; or
 - ii) 0.1 hectare, for single beacons;

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³⁷ DFN propose: "Following Consultation with the Dehcho Government agents, employees, contractors ..."

³⁸ DFN propose: "...necessary to such access..." rather than "... incidental to...".

- b) stream gauges; and
- c) fuel caches.

A.10.3 The Government of Canada or the Government of the Northwest Territories will **Consult**³⁹ the Dehcho Government prior to establishing any structures referred to in A.10.2.

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A.10.4 The Department of National Defence and the Canadian Forces ⁴⁰have a right of access to the Dehcho Ndehe **and Waters overlying Dehcho Ndehe** for **military exercise**⁴¹ with the agreement of the Dehcho Government or, failing an agreement, on conditions established in accordance with the Dispute Resolution chapter.

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Where the Minister of National Defence and the Dehcho Government do not reach agreement on conditions for the exercise of that right of access, the Minister of National Defence may refer the dispute for resolution in accordance with the Dispute Resolution chapter, but that Department and those Forces may not exercise **that right**, until the dispute has been resolved or determined.

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A.10.5 The Final Agreement will not limit the authority of Canada or the Minister of National Defence to carry out any and all activities related⁴² to national defence and national security⁴³ nor limit the authority of the Minister of National Defence under section 257 of the *National Defence Act, R.S.C. 1985, c. N-5*.

A.10.6 Any government representative authorized under Legislation to provide **electrical power, telecommunications services or similar public utilities to the public**, other than pipelines for the transmission of hydrocarbons, will have a right of access to Dehcho Ndehe to carry out assessments, surveys and studies in relation to the proposed services, provided they Consult with Dehcho Government prior to exercising such right.

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A.10.7 Any government representative exercising access to Dehcho Ndehe under A.10.1, A.10.4 or A.10.6 may employ any mode of transport.

³⁹ DFN propose to replace “inform” with “Consult”.

⁴⁰ DFN propose: “...will have a right of access...”

⁴¹ DFN propose that “military manoeuvres” be a defined term.

⁴² DFN propose “...necessary to National Defence” rather than “related to...”.

⁴³ Should “national security” be a defined term?

- A.10.8 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under A.10.1, A.10.4 or A.10.6; and
 - b) any cost incurred by the Dehcho Government in relation to access under A.10.1, A.10.4 or A.10.6⁴⁴
- unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.
- A.10.9 There is no permitting, licensing or screening required for access under A.10.1, A.10.4 or A.10.6 unless otherwise provided by
- a) existing Legislation; or
 - b) Legislation enacted after Consultation with the Dehcho Government.
- A.10.10 Access under A.10.1, A.10.4 or A.10.6 is subject to:
- a) applicable conditions and restrictions set out in A.11.0;
 - b) specific additional conditions which may be made in accordance with A.12.0;
 - c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
 - d) Legislation⁴⁵.

A.11.0 CONDITIONS AND RESTRICTIONS

- A.11.1 Unless otherwise agreed to by the Dehcho Government, government representatives accessing Dehcho Ndehe under A.10.1, A.10.4 or A.10.6 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such government representative or for damage to the property of such government representative that

⁴⁴ DFN believe the Dehcho Government should be compensated for any damage to Dehcho Ndehe.

⁴⁵ DFN propose that the Agreement require Consultation with the Dehcho Government with respect to any Legislation.

results from a danger arising from the wilful or reckless conduct or by the negligent⁴⁶ action of the Dehcho Government or any Dehcho Citizen.

- A.11.2 Unless otherwise agreed to by the Dehcho Government, access under A.10.1, A.10.4 or A.10.6 is subject to conditions that the government representative exercising the access:
- a) does not cause unnecessary significant⁴⁷ damage to the Dehcho Ndehe or structures on the Dehcho Ndehe, and is responsible for any such damage; and
 - b) does not unnecessarily interfere with the use and peaceable enjoyment of the Dehcho Ndehe by the Dehcho Government or a Dehcho Citizen.
- A.11.3 Prior to accessing the Dehcho Ndehe under A.10.1, A.10.4 or A.10.6, the Government of Canada or the Government of the Northwest Territories, as applicable, will give prior notice⁴⁸ of such access to the Dehcho Government when it is reasonable to do so except no notice⁴⁹ will be given when:
- a) the access concerns an activity related to law enforcement, investigations, inspections or crime prevention; or
 - b) notice would be contrary to the interests of national defence and national security.
- A.11.4 Excepting the establishment of structures under A.10.2, **or the Remediation of a Contaminated Site under X in Dehcho Ndehe chapter or CL.5 in the Community Lands chapter**, if the Government of Canada or the Government of the Northwest Territories requires the continuous use or occupancy of any part of the Dehcho Ndehe for more than two years, the Dehcho Government may require the Government of Canada or the Government of the Northwest Territories to acquire an interest in the lands for that purpose by agreement or under the Expropriation chapter.

A.12.0 ADDITIONAL CONDITIONS BY AGREEMENT

⁴⁶ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

⁴⁷ DFN propose to delete "significant".

⁴⁸ DFN propose: "...will Consult with the Dehcho Government...", rather than "give prior notice..."

⁴⁹ DFN propose: "except Consultation will modified as necessary when:"

A.12.1 Subject to A.12.2, the Dehcho Government may propose to the Government of Canada and the Government of the Northwest Territories additional conditions on access to the Dehcho Ndehe under A.10.1 provided such conditions pertain only to:

- a) requirements for notice or registration by government representatives accessing the Dehcho Ndehe; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
 - i) protect the Environment;
 - ii) conserve Wildlife, Fish, Migratory Birds or their habitats;
 - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of the Dehcho Ndehe by Dehcho Citizens; and
 - iv) protect Camps or structures.

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A.12.2 Additional conditions may not be established in accordance with A.12.1, whether through agreement with Government of Canada and the Government of the Northwest Territories or the process set out in the Dispute Resolution chapter, for the exercise of access rights in relation to law enforcement, investigations, inspections or crime prevention under Law, or for access by the Department of National Defence and the Canadian Forces under A.10.4.⁵⁰

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A.12.3 Upon proposal by the Dehcho Government of an additional condition in accordance with A.12.1, the Parties will enter into negotiations with respect to the proposed additional condition.

A.12.4 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under A.12.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

A.12.5 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under A.12.4.

⁵⁰ DFN may propose to delete 12.2. Further discussion required.

A.12.6 Further conditions on access under A.10.1, A.10.4 and A.10.6 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

PART VI ACCESS TO CONSTRUCTION MATERIALS

A.13.0 GENERAL

A.13.1 The Dehcho Government will provide to any Person, the Government of Canada, the Government of the Northwest Territories or Dehcho Community Government:

- a) supplies of Construction Material in the Dehcho Ndehe; and
- b) access to the Dehcho Ndehe for the purpose of obtaining the supplies of Construction Material,

where the Construction Material is to be used on lands other than the Dehcho Ndehe or Dehcho Community Land and where there is no alternative supply within a reasonable proximity to the location of the proposed use.⁵¹

A.13.2 Excepting A.13.3, the Dehcho Government is entitled to be paid for:

- a) the value of Construction Material supplied under A.13.1; and
- b) the exercise of access under A.13.1.

A.13.3 The Dehcho Government is not entitled to be paid for:

- a) the value of Construction Material supplied under A.13.1;
- b) the exercise of access under A.13.1; or
- c) any cost incurred by the Dehcho Government in relation to those Construction Material or for the access under A.13.1,

if the materials are to be used, for a public purpose, or used in the Dehcho Ndehe or used for a public road proximate to the Dehcho Ndehe

⁵¹ The DFN question whether other governments, including Canada and the GNWT, are subject to similar legal requirements to provide construction materials to other governments and private interests.

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or Dehcho Community Land where such road will provide access to the Dehcho Ndehe or Dehcho Community Land.⁵²

A.13.4 Any dispute arising under A.13.1, A.13.2 or A.13.3 may be referred to dispute resolution in accordance with the Dispute Resolution chapter.

A.14.0 CONDITIONS AND RESTRICTIONS

A.14.1 ~~Prior to accessing Dehcho Ndehe under A.13.1, the Government of Canada and the Government of the Northwest Territories will give proper notice of such access to the Dehcho Government when it is practicable to do so.~~

A.14.2 Unless otherwise agreed to by ~~any Person exercising access and the Dehcho Government,~~ a Person accessing the Dehcho Ndehe under A.13.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent⁵³ action of the Dehcho Government or any Dehcho Citizen.

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PART VII ACCESS TO CONTAMINATED SITES

A.15.0 GENERAL

A.15.1 Agents, employees and contractors of the Government of Canada and the Government of the Northwest Territories have a right of access to the Dehcho Ndehe to:

- a) conduct Remediation under [Chapter]; or
- b) use Specified Substances or other natural resources on Dehcho Ndehe to the extent necessary to conduct the Remediation.

A.15.2 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under A.15.1;

⁵² DFN believe the Dehcho Government should be compensated, at least in some circumstances.

⁵³ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

- b) the use of Specified Substances or other natural resources⁵⁴ under A.15.1; or
- c) any cost incurred by the Dehcho Government in relation to the access or Specified Substances and natural resources under A.15.1.

A.15.3 There is no permitting, licensing or screening required for access under A.15.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.⁵⁵

A.15.4 Agents, employees and contractors of the Government of Canada and the Government of the Northwest Territories exercising access to the Dehcho Ndehe under A.15.1 may employ any ⁵⁶mode of transport.

A.16.0 CONDITIONS AND RESTRICTIONS

A.16.1 Unless otherwise agreed to by **any Person exercising access and the Dehcho Government**, a Person accessing the Dehcho Ndehe under A.15.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent⁵⁷ action of the Dehcho Government or any Dehcho Citizen.

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A.16.2 Prior to accessing the Dehcho Ndehe under A.15.1, the Government of Canada or the Government of the Northwest Territories, as applicable, shall give prior notice of such access to the Dehcho Government when it is **practicable** to do so.

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PART VIII WINTER ROAD ACCESS

A.17.0 GENERAL

⁵⁴ DFN question whether the Dehcho Government should be paid for the use of its natural resources in Remediation.

⁵⁵ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada".

⁵⁶ DFN propose: "... any *necessary* mode of transport."

⁵⁷ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

- A.17.1 Agents, employees, and contractors of the Government of the Northwest Territories⁵⁸ have a right of access to the Dehcho Ndehe to:
- a) establish and build the Winter Roads shown on the map in Appendix “Y”; and
 - b) manage, control, vary or close up those Winter Roads.
- A.17.2 Any Person has a right to travel on the Roads referred to in A.17.1 in accordance with Legislation in respect of Public Highways.⁵⁹
- A.17.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under A.17.1 or A.17.2; and
 - b) any cost incurred by the Dehcho Government in relation to access under A.17.1 or A.17.2,
- unless otherwise provided by Legislation enacted after Consultation with the Dehcho.⁶⁰
- A.17.4 There is no permitting, licensing or screening required for access under A.17.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.⁶¹
- A.17.5 Agents, employees and contractors of Government of the Northwest Territories exercising access to the Dehcho Ndehe under A.17.1 may employ any⁶² mode of transport.
- A.17.6 Access under A.17.1 or A.17.2 is subject to:
- a) applicable conditions and restrictions set out in A.18.0;

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⁵⁸ Will the Dehcho Government have similar access to Crown land and GNWT land for building and managing roads deemed necessary by the Dehcho Government?

⁵⁹ The DFN propose that the Dehcho Government will have jurisdiction to restrict use of Winter Roads on Dehcho Ndehe.

⁶⁰ DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”.

⁶¹ DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”.

⁶² Or “...any necessary mode of transport.”

- b) specific additional conditions which may be made in accordance with A.19.0;
- c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- d) Legislation.⁶³

A.18.0 CONDITIONS AND RESTRICTIONS

A.18.1 Unless otherwise agreed to by any Person exercising access and the Dehcho Government, a Person accessing the Dehcho Ndehe under A.17.1, or A.17.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful or reckless conduct or by the negligent⁶⁴ action of the Dehcho Government or any Dehcho Citizen.

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A.18.2 Prior to accessing the Dehcho Ndehe under A.17.1, the Government of Canada or the Government of the Northwest Territories, as applicable, shall give prior notice⁶⁵ of such access to the Dehcho Government when it is reasonable to do so.

A.19.0 ADDITIONAL CONDITIONS BY AGREEMENT⁶⁶

A.19.1 Subject to A.19.2, the Dehcho Government may propose to the Government of Canada and the Government of the Northwest Territories additional conditions on access to the Dehcho Ndehe under A.17.1 or A.17.2 provided such conditions pertain only to:

- a) requirements for notice or registration by Persons accessing the Dehcho Ndehe; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:

⁶³ DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)".

⁶⁴ The DFN question whether mere negligence on the part of the Dehcho government should give rise to a cause of action in these circumstances. "Gross negligence" may be a more appropriate standard.

⁶⁵ DFN propose a duty to Consult rather than merely give notice to the Dehcho Government.

⁶⁶ Sections 19.1 and 19.2 may be unnecessary if other DFN proposals respecting Winter Roads are agreed to.

- i) protect the Environment;
- ii) conserve Wildlife, Fish Migratory Birds or their habitats;
- iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of the Dehcho Ndehe by Dehcho Citizens; and
- iv) protect Camps or structures.

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A.19.2 Additional conditions may not be established in accordance with 17.7.1 whether through agreement with Government or the process set out in the Dispute Resolution chapter, for the exercise of access rights in relation to law enforcement, investigations, inspections or crime prevention under Law.

A.19.3 If the Dehcho Government and the Government of Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under A.19.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

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A.19.4 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under A.19.2.

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A.19.5 Further conditions on access under A.17.1 or A.17.2 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

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PART VIV

A.20.0 SURFACE RIGHTS BOARD

A.20.1 Prior to the Dehcho Agreement, the Parties will review the subject matter of the establishment of a Surface Rights Board in light of current Government proposals

PART VV

A.21.0 LINEAR PROJECTS

DFN AIP – Rolling Draft - LTC
November 26, 2009

Without Prejudice
For Discussion Purposes Only

A.21.1 Prior to the Dehcho Agreement, the Parties will discuss provisions for access to Dehcho Ndehe for the purpose of planning, constructing, operating and maintaining linear projects.

