

**Reviewed by LTC, Aug. 8-10, 2011**

## **CHAPTER CG: DEHCHO COMMUNITY GOVERNMENTS**

### **CG.1 DEHCHO COMMUNITY GOVERNMENTS**

**CG.1.1.1** The Dehcho Community Governments of [list Dehcho communities] will be recognized by the Dehcho Agreement.<sup>1</sup>

**CG.1.1.2** The Dehcho Agreement will

- a) delineate the boundary of each Dehcho Community;
- b) provide for the structures and administration of Dehcho Community Governments and for their dissolution in accordance with chapter CG.8;
- c) provide for transitional arrangements respecting existing community governments in Dehcho communities, including transfer of their assets and assumption of their liabilities and, where necessary, their dissolution;
- d) set out the powers of the Dehcho Community Governments;
- e) describe the procedures through which the Chiefs and Councilors of Dehcho Community Governments may be selected;<sup>2</sup>
- f) delineate the authority of the GNWT with respect to the operational and financial accountability of Dehcho Community Governments;
- g) provide for the cancellation of any certificate of title<sup>3</sup> issued before the Effective Date for any land that has become Dehcho Community land;
- h) provide for the issuance of a new certificate of title<sup>4</sup> for an interest listed in Schedule XX, where a certificate of title was issued before the Effective Date and cancelled pursuant to 1.1.2 (g);
- i) provide for the requirements for the issuance of certificates of title for Community land and for the registration of instruments related to Community lands;
- j) set out the powers required for Dehcho Community Governments to administer Community lands; and

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<sup>1</sup> Canada and GNWT prefer to say "...established pursuant to the Dehcho Agreement".

<sup>2</sup> Some Dehcho communities will elect their Chiefs and Councilors, others will continue to use Dene custom to choose their Chief and Council.

<sup>3</sup> Should leases also be cancelled?

<sup>4</sup> And leases?

- k) set out the powers required for Dehcho Community Governments to enter into municipal services agreements.

## **CG.2 STRUCTURE OF DEHCHO COMMUNITY GOVERNMENTS**

**CG.2.1** A Dehcho Community Government will be comprised of a Chief and an even number of councilors. No Dehcho Community Government will have less than two<sup>5</sup> councilors. The maximum number of councilors for each Community will be determined in relation to the number of residents in the Community, including children, as confirmed by the most recent census conducted before the election of the councilors, as follows:

<u>Number of Community Residents</u>	<u>Maximum Number of Councilors</u>
Less than 500	6
500-999	8
1,000 or more	10

**CG.2.2** The Dehcho Agreement provisions recognizing Dehcho Community Governments will

- a) recognize the right of Dehcho Communities to choose their leadership according to Dene custom<sup>6</sup> rather than by election;
- b) define residency in a Dehcho Community or in Dehcho Ndehe for the purposes of this chapter;
- c) for those Dehcho Communities which elect their Chief and Councilors, describe eligibility criteria for Dehcho Community Government elections;
- d) describe the grounds and the processes for removing a Chief or a Councilor from office;
- e) for those Dehcho Communities which elect their Chief and Councilors, provide for a candidate for Chief or for candidates for Councilor seats to be acclaimed without an election where there is only one candidate for Chief or the number of candidates for council seats is less than the number of vacant seats;
- f) provide for a periodic census for the purposes of CG.2.1; and
- g) provide for the appointment of a Councilor to act as Sub Chief, who will act as Chief in the absence of the Chief.

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<sup>5</sup> GNWT suggests minimum of four Councilors.

<sup>6</sup> May need to define "Dene custom". Is custom consistent with public government?

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**CG.2.3** For those Dehcho Communities which elect their Chief and Councilors, a person is eligible to vote in elections for a Dehcho Community Government if that person

- a) is a Canadian citizen or permanent resident of Canada;
- b) is resident<sup>7</sup> in the Dehcho Community for at least the six months immediately preceding the election;
- c) has been resident in Dehcho Ndehe<sup>8</sup> or in a Dehcho Community for at least the five years<sup>9</sup> immediately preceding the election; and
- d) is at least 18 years of age on the day of the election.

**CG.2.4** The Chief and Sub-Chief of a Dehcho Community Government must be Dehcho Citizens who are at least 18 years of age and have been resident in the community for at least the two years<sup>10</sup> immediately preceding taking office.

**CG.2.5** Subject to 2.6, in an election for a Dehcho Community Government those candidates with the most votes shall be elected as councilors.

**CG.2.6** No more than half of the council seats may be filled by candidates who are not Dehcho Citizens and the remaining seats shall be filled by the candidates with the most votes among those who are Dehcho Citizens.

### **CG.3 DELEGATION**

**CG.3.1** A Dehcho Community Government may delegate any of its powers, except the power to enact laws, to:

- a) a public body or office established by a law of that Dehcho Community Government;
- b) the Dehcho Government or a body or office established by a Dehcho law;
- c) Canada or the GNWT, including a department, agency or office of either Canada or the GNWT; or
- d) a public body established by Legislation.

**CG.3.2** A delegation under 3.1 must be in writing and, if under 3.1 (b) or (c) must be agreed to by the delegate.

**Deleted: CG.2.5** At least half of a Community Government's council seats will be filled by persons who are Dehcho Citizens and the remaining seats may be filled by the candidates with the most votes among those who are either Dehcho Citizens or eligible residents.¶

<sup>7</sup> Should only Citizens be eligible to vote for Chief, as in Tlicho, or all residents who meet residency rule?

<sup>8</sup> Or in Settlement Area. (HR might not be part of Dehcho Ndehe).

<sup>9</sup> Constitution could provide for residency requirement - max 5 years or 2 years.

<sup>10</sup> This would require that Councilor who is named Sub-Chief meet 2 year residency requirement.

**CG.3.3** A Dehcho Community Government has the capacity to enter into agreements to receive powers, including powers to enact laws, by delegation. The delegation agreement may include powers exercisable outside the Dehcho Community and powers to enact laws applicable outside the Dehcho Community.

**CG.3.4** Where the Dehcho Government has delegated authority to a Dehcho Community Government to deliver programs for which federal or territorial funding would be available to the Dehcho Government if it were delivering the programs, the Dehcho Community Government will be treated as though the Dehcho Government had made the application to government for program funding.

**CG.3.5** When applying to government for funding under 3.4, a Dehcho Community Government will be treated as a separate entity for purposes of calculating the entitlement to and quantum of funding.

#### **CG.4 POWERS TO ENACT LAWS<sup>11</sup>**

**CG.4.1** In addition to other powers<sup>12 13</sup> provided for in the Dehcho Agreement, the Agreement will provide that Dehcho Community Governments have the power to enact laws<sup>14</sup> relating to

- (a) the operation and internal management of the Dehcho Community Government;
- (b) the borrowing of money by the Dehcho Community Government;
- (c) the administration of and the granting of interests in Community lands; and
- (d) the following matters in the Dehcho Community:
  - (i) management, use and protection of lands and renewable<sup>15</sup> resources, including land use planning, local protected areas, zoning and subdivision control;
  - (ii) the purchase and acquisition of real property by the Dehcho Community Government and the sale, lease, disposition, use, holding or development of Dehcho Community Government real property; **(move to Community Lands?)**
  - (iii) expropriation of interests in land<sup>16</sup>; **(move to Community Lands?)**
  - (iv) public order, peace and safety;
  - (v) programs, services, and facilities provided by or on behalf of the Dehcho Community Government including, but not limited to, sewers, drainage, water distribution and supply, garbage and waste, ambulance services, and recreation;
  - (vi) public nuisances, including unsightly property;

<sup>11</sup> Compare to GNWT's proposed Local Svcs chapter which used 2 distinct lists of powers.

<sup>12</sup> Tlicho does not include phrase "In addition to other powers...".

<sup>13</sup> Should these (eg. Housing) be listed in (d) below, or leave in separate chapters?

<sup>14</sup> GNWT prefers "laws of a municipal nature...". Would "laws of a LOCAL (or Community) nature" or work?

<sup>15</sup> Tlicho Agmt does not include renewable resources.

<sup>16</sup> Cda would exclude expropriation of Crown lands.

- (vii) by-law enforcement; **(move to Justice?)**
- (viii) intoxicants;
- (ix) community roads<sup>17</sup>;
- (x) local transportation;
- (xi) business licensing and regulation;
- (xii) domestic animals and activities in relation to them;
- (xiii) gaming and recreational contests;
- (xiv) fire protection and prevention;
- (xv) motor vehicles;
- (xvi) emergency preparedness and emergency measures;
- (xvii) IBAs for projects affecting only one community<sup>18</sup>;
- (xviii) community flag, crest and coat of arms; and
- (xix) other matters of a local or private nature, including property assessment and taxation.

**CG.4.2** For greater certainty, the authority of a Dehcho Community Government to make laws in respect of a subject matter as set out in the Dehcho Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising that authority.

**CG.4.3** Where Dehcho Community Government laws made pursuant to CG.4.1 provide for health and safety standards, housing construction codes and technical codes regarding public works, community infrastructure and local services, they will be at least equivalent to federal and NWT health and safety standards and technical codes.

**Deleted: CG.4.3** For greater certainty, the Government of Canada will have the exclusive authority to enact laws that are criminal laws or in relation to criminal procedures.¶

**CG.4.4** The GNWT will Consult with the Dehcho Community Governments prior to amending or establishing standards and technical codes referred to CG.4.3.

**CG.4.5** A Dehcho Community Government shall have standing to make representations to the Public Utilities Board, or any other administrative decision-maker established pursuant to NWT Law, when the Board or decision-maker considers any matter which:

- (a) is within the jurisdiction of the Board or decision maker affecting the provision of a public utility service within the Dehcho Settlement Area; and
- (b) may impact upon the Dehcho Community Government.

**CG.4.6** Notwithstanding the geographic limit in LS.1.1 and LS.1.3, Dehcho Community Government Laws made pursuant to LS.1.1 and LS.1.3 may apply, by agreement between the Dehcho Community Government and the GNWT, outside the community boundaries in order to facilitate the delivery of services.<sup>19</sup>

<sup>17</sup> GNWT says highways should be excluded.

<sup>18</sup> Is law making authority necessary re: IBAs?

<sup>19</sup> The issue of setting and amending Community Boundaries is usually located in a Land Chapter: (a) the GNWT with the Community Government would have the authority to establish and adjust community

## **CG.5 INCONSISTENCY OR CONFLICT**

**CG.5.1** Except where otherwise provided in the Dehcho Agreement, in the case of any inconsistency or conflict between federal legislation and laws enacted by a Dehcho Community Government, the law of the Dehcho Community Government prevails to the extent of the inconsistency or conflict.<sup>20</sup>

**CG.5.2** Except where otherwise provided in the Dehcho Agreement, in the case of any inconsistency or conflict between laws enacted by a Dehcho Community Government and territorial legislation, the law of the Dehcho Community Government prevails to the extent of the inconsistency or conflict.

**CG.5.3** In the case of conflict between a Dehcho law and a law enacted by a Dehcho Community Government, the Dehcho law will prevail to the extent of the conflict.<sup>21</sup>

## **CG.6 PROGRAMS AND SERVICES**

**CG.6.1** A Dehcho Community Government may enter into agreements with government, other community governments or the Dehcho Government to deliver, administer and manage programs and services for residents of a Dehcho Community.

**Deleted:** or bodies of a type identified in the territorial legislation establishing community governments,

**CG.6.2** Programs and services delivered and managed by a Dehcho Community Government will be funded at levels at least<sup>22</sup> comparable to funding levels for similar programs and services in other communities in the NWT. Where the Dehcho Community Government and the Government of the NWT do not agree on funding levels<sup>23</sup>, the Dehcho Government may refer the dispute for resolution under chapter DR.

## **CG.7 EXPANSION OF DEHCHO COMMUNITY BOUNDARIES**

**CG.7.1** The boundary of a Dehcho Community may, in accordance with the Dehcho Agreement and the Appendix to this chapter, be expanded.

## **CG.8 DISSOLUTION OR RELOCATION**

**CG.8.1** The agreement of the Parties is required before a Dehcho Community Government is dissolved or before a Dehcho Community is relocated.

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boundaries; (b) the GNWT would consult with the Dehcho Regional Government when a change in boundary may involve settlement lands.

<sup>20</sup> Canada prepared to consider community laws prevailing on 'case-by-case' basis, but not as general rule.

<sup>21</sup> If Dehcho Gov't is not public gov't, but community gov'ts are, this could be a problem for Cda.

<sup>22</sup> GNWT wants "least" deleted.

<sup>23</sup> Tlicho only allows funding methods to be arbitrated, not actual amounts of funding.


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**CG.8.2** An agreement under 8.1 will, subject to chapter XXX, make provision for all assets and liabilities of the Dehcho Community Government.

**CG.8.3** In the agreement under 8.1, the Parties will describe the amendment to the Dehcho Agreement required to reflect the dissolution of any Dehcho Community Government or the relocation of any Dehcho Community.

**CG.8.4** The dissolution or relocation is not effective until the amendment to the Agreement referred to in 8.3 is consented to.

## **CG.9 ESTABLISHMENT OF NEW DEHCHO COMMUNITY GOVERNMENTS**

**CG.9.1** A new Dehcho Community Government will only be established by agreement among the Parties. 

**Deleted:** The agreement among the Parties will set out the powers of the government for that community and provide for its administration and structures.

**CG.9.2** In the agreement under 9.1, the Parties will describe the amendment to the Agreement required to reflect the establishment of a new Dehcho Community Government.

**CG.9.3** The establishment of a new Dehcho Community Government is not effective until the amendment to the Agreement referred to in 9.2 is consented to.

## **APPENDIX TO CHAPTER CG**

### **PROCESS FOR EXPANSION OF THE BOUNDARY OF A COMMUNITY (CG.7.1)**

1. Canada and the Dehcho Government<sup>24</sup>, when Dehcho Ndehe is involved, or the GNWT and the Dehcho Government when Commissioner's Land is involved, will<sup>25</sup> negotiate an agreement to expand the boundary of a Dehcho Community at the written request of the Dehcho Community Government.<sup>26</sup>
2. The consent of the Dehcho Government is required where the expansion of the boundary would be into an area containing part of Dehcho Ndehe.
3. Before requesting to expand the boundary of a Dehcho Community into an area containing part of Dehcho Ndehe, the Dehcho Community Government will discuss with the Dehcho Government the need for the expansion and will attempt to negotiate an

<sup>24</sup> ~~The GNWT will be a party to negotiations where Commissioner's Lands would be affected.~~

<sup>25</sup> Canada questions why negotiations would be mandatory.

<sup>26</sup> Tlicho Agmt says Minister of NWT will decide whether to expand community lands.

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agreement with the Dehcho Government for the conveyance of the portions of Dehcho Ndehe required for the expansion.

4. Where part of Dehcho Ndehe becomes part of Dehcho Community lands under an agreement to expand a Dehcho Community boundary, Crown land of equivalent size and value will be added to Dehcho Ndehe.<sup>27</sup>

5. Where the parties to negotiations under section 1 of this Appendix decide not to expand the boundary of the community, they will provide written reasons for their decision.

6. Before deciding not to expand the boundary of a community, the parties to the negotiations under section 1 of this Appendix will engage in mediation with the affected Dehcho Community Government.

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<sup>27</sup> Canada questions why Crown land would be added.