

CHAPTER T: TREE HARVESTING

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T.1.0 GENERAL

T.1.1 The Dehcho Government owns the Trees located within Dehcho Ndehe.

T.1.2 Subject to T.6.0, this chapter applies throughout the Area shown as Appendix “T”.

T.1.3 Dehcho Citizens have the right to harvest all species of Trees throughout the area shown in Appendix “T” at all times of the year for the following purposes:

- a) firewood for personal use;
- b) firewood for community purposes within the area shown in Appendix “T” ;
- c) construction or maintenance of hunting, trapping and fishing Camps for personal use;
- d) the making of handicrafts for personal use;
- e) traditional, cultural or medicinal purposes;
- f) construction of boats and rafts for personal use;
- g) construction of houses for personal occupancy by Dehcho Citizens ;
and
- h) construction of public structures for community use within the area shown in Appendix “T” .¹

¹ Dehcho prefers to delete a) – h). GNWT will review the clause in conjunction with a definition of the phrase “Subsistence or Personal use” and its inclusion in the provision.

- T.1.4** The right provided for in T.1.3 may be limited or restricted:
- a) by provisions of the Dehcho Agreement; or
 - b) for purposes necessary for to:
 - i) Conservation;
 - ii) Public Health;
 - iii) Public Safety;
 - iv) Forest Management;
 - v) land management within the Dehcho Settlement Area; and
 - vi) protection of the Environment from significant damage.²
- T.1.5** The Minister has the authority to manage and conserve Trees and Tree habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.³
- T.1.6** Subject to T.1.7, Government will Consult the Dehcho Government prior to imposing a limitation or restriction pursuant to T.1.4 (b).
- T.1.7** In the event of an Emergency, Government may impose an interim limitation or restriction related to T.1.4 (b). As soon as possible thereafter, Government will notify the Dehcho Government and provide reasons for the decision. Government will Consult the Dehcho Government with respect to any ongoing terms and conditions which may result from the event.
- T.1.8** Nothing in the Dehcho Agreement⁴ will be construed to:
- a) recognize a right to harvest Trees for commercial purposes or sale;

² DFN question the need for (iv), (v) and (vi)

³ Government is examining "...and will exercise that authority in a manner that is consistent with the Dehcho Agreement

⁴ Dehcho prefers "in this chapter".

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- b) confer rights of ownership in Trees, other than T.1.1;
- c) guarantee the supply of Trees;
- d) preclude individuals who are not Dehcho Citizens from Harvesting Trees, except that they may be precluded from doing so by Legislation;
- e) entitle Dehcho Citizens to any compensation for damage to or loss of Trees or Tree Harvesting opportunities within the area shown in Appendix “T”⁵; or
- f) affect any responsibility of Government for the fighting of forest fires.

T.1.9 Dehcho Citizens will not be subject to any tax,⁶ fee for Tree Harvesting pursuant to T.1.3.

T.1.10 Prior to Dehcho Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest, possess and transport Trees as set out in the Dehcho Agreement.

T.1.11 Dehcho Citizens will have the right to use any method, and to possess and use any equipment, for the purpose of the Tree Harvesting pursuant to T.1.3.

T.1.12 Dehcho Citizens have the right to possess and transport anywhere in Canada⁷ Trees harvested pursuant to T.1.3, subject to any identification requirements agreed to by the Parties.⁸ When exercising this right, Dehcho Citizens will not be required to obtain a licence from Government,⁹ nor be subject to any fee.

⁵ Note: This is linked to an ongoing issue in the Harvester’s Compensation chapter

⁶ Need for “tax” under discussion

⁷ May need to be subject to provincial laws restricting transport. Review needed.

⁸ Canada and the GNWT prefer to delete “agreed to by the Parties” and replace it with “set out in Legislation”. Parties also considering adding the clause “..or in Dehcho Law” to reflect 10.4.1 of the Tlicho Agreement.

⁹ DFN say “from Government” should be deleted.

T.2.0 GIFTING AND TRADING

T.2.1 Dehcho Citizens have the right to Gift Trees harvested pursuant to T.1.3 to any individual for Subsistence¹⁰ or Personal Use.

T.2.2 Dehcho Citizens will have the right to Trade¹¹ Trees harvested pursuant to T.1.3 with:

- a) other Dehcho Citizens; and
- b) members of other Aboriginal groups¹² with whom the Dehcho Dene have traditionally traded in the Dehcho Traditional Trading Area.¹³

for Subsistence or Personal Use.

T.3 OVERLAP AND SHARED USE AGREEMENTS

T.3.1 Prior to Dehcho Agreement, the Dehcho First Nations or the Dehcho Government may formalize relationships for the Harvesting of Trees with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of all Parties, overlap agreement provisions pertaining to the Harvesting of Trees may be incorporated into the Dehcho Agreement.

T.4 ACCESS

T.4.1 ¹⁴Dehcho Citizens will have a right of access to all land within the area shown in Appendix “T” for the purpose of Tree Harvesting under T.1.3.

¹⁰ Canada suggests reviewing LIA definition.

¹¹ Canada wants “trade” to be defined in a way that makes it clear it is non-commercial.

¹² The reference to “other Aboriginal Groups” is an issue for Dehcho.

¹³ [New] Identification of the Aboriginal peoples in question may preclude the need for a reference to “Traditional Trading Area” or vice versa

¹⁴ Canada prefers to begin this sentence with “Subject to T.4.3 and subsidiary agreements addressing access for harvesting contemplated by the Dehcho Agreement...”

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T.4.2 Dehcho Citizens may establish and use Camps on Crown land within the area shown in Appendix “T”, subject to limitations on access set out in T.4.3, provided such Camps are reasonably incidental to the Harvesting of Trees under T.1.3.

T.4.3 This right of access does not apply:

- a) on Indian reserve lands¹⁵;
- b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease;¹⁶
- c) where it conflicts with any activity carried out under an authorization granted by Government such as a timber licence or permit, a Forest Management agreement or land use permit; and
- d) where lands are dedicated to military or national security purposes pursuant to Legislation, or areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government .

T.4.4 A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding access to lands described in T.4.3 for the Harvesting of Trees under T.1.3.

T.5.0 CONSULTATION

T.5.1 Government will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Trees as set out in the Dehcho Agreement.

T.5.2 Government will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Trees;

¹⁵ DFN questions need for (a) .

¹⁶ DFN questions the inclusion of “lands subject to an agreement for sale or lands subject to a surface lease” and is considering language re “visible incompatibility”

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- b) authorizing a new commercial activity to harvest Trees, or
- c) permitting any commercial activity for the propagation or cultivation of a species of Tree,

that could adversely affect the exercise of the right to harvest Trees as set out in the Dehcho Agreement.¹⁷

T.6.0 TREE MANAGEMENT

T.6.1 Prior to concluding the Dehcho Agreement, the Parties will address:

- a) The manner in which Trees will be managed¹⁸ .
- b) the participation of the Dehcho Government in the management of Trees¹⁹

if the harvesting rights recognized in this chapter could be affected.²⁰

T.7.0 EMERGENCIES

T.7.1 Nothing in the Dehcho Agreement will prevent any individual from Harvesting Trees for survival in an Emergency.

¹⁷ Other land claim agreements only require governments to consult with respect to proposed activities within the Settlement Area

¹⁸ Government wants "...managed within the Dehcho Settlement Area

¹⁹ Government wants "...managed within the Dehcho Settlement Area

²⁰ Other land claim agreements only purport to include First Nations in management regimes wholly within respective Settlement Areas