First Nations Tax Commission
Commission de la fiscalité des premières nations

The First Nations Tax Commission, pursuant to the *First Nations Fiscal Management Act*, hereby approves the following law made by the Penticton Indian Band in the Province of British Columbia,

Penticton Indian Band
Development Cost Charges Law, 2020

Dated at Kamloops, British Columbia this 9th day of February, 2021.

On behalf of the First Nations Tax Commission

C.T. (Manny) Jules – Chief Commissioner
First Nations Tax Commission

PENTICTON INDIAN BAND

DEVELOPMENT COST CHARGES LAW, 2020

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SCHEDULES

WHEREAS:

A. Pursuant to section 5 of the *First Nations Fiscal Management Act*, the council of a first nation may make laws respecting taxation for local purposes of reserve lands and interests in reserve lands, including the imposition of development cost charges;

B. The Council of the Penticton Indian Band deems it to be in the best interests of the Band to make a law for the imposition of development cost charges to assist the Band to pay the capital costs of providing, constructing, altering, or expanding sewage, water, and transportation facilities, in order to serve, directly or indirectly, the development in respect of which such charges are imposed;

C. The Council has developed the Penticton Indian Band's Long Term Capital Plan dated February 2, 2018 to support the development cost charges imposed by this Law;

D. The Council enacted the *Penticton Indian Band Development Charges Law, 2018* and wishes to repeal that law; and

E. The Council has given notice of this Law and has considered any representations received by the Council, in accordance with the requirements of the *First Nations Fiscal Management Act*;

NOW THEREFORE the Council of the Penticton Indian Band duly enacts as follows:

PART I

CITATION

Citation

1. This Law may be cited as the *Penticton Indian Band Development Cost Charges Law, 2020.*

PART II

DEFINITIONS AND REFERENCES

Definitions and References

2.(1) In this Law:

"Act" means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

"administrator" means a person appointed by Council under subsection 3(1) to administer this Law;

"assist factor" means that percentage of the capital costs of each development cost charge class that will be paid by the Band;

"Band" means the Penticton Indian Band, being a band named in the schedule to the Act;

"Board" means the First Nations Financial Management Board established under the Act;

"building" means any structure used or intended for supporting or sheltering any use or occupancy and includes a manufactured home;

"capital costs" includes planning, engineering and legal costs directly related to the work for which a capital cost may be incurred, and interest costs incurred by the Band that are directly related to the work;

"certificate of possession" means a certificate of possession issued to a member of the Band pursuant to ss. 20(2) of the *Indian Act*;

"commercial development" means a development used or intended to be used for the carrying on of any business, including the provision or sale of goods, accommodation, entertainment, meals or services, but excludes an industrial or residential development;

"Council" means the elected Chief and Council of the Band;

"developer" means any person or firm authorized by the parcel holder to represent the parcel holder of the land on the reserves to be developed or a lessee of that land, who will be undertaking the development of that land;

"development" means the construction, alteration, excavation or improvement of land, building or other structure that requires the installation of any works and services under the Subdivision Law and that requires a development permit or subdivision permit, or both, in accordance with that law;

"development approval" means the approval of the Band for the development of a parcel as evidenced by the issuance of a development permit as detailed in the Subdivision Law;

"development cost charge" means an amount levied under subsection 5(1);

"development cost charge class" means a class of works, for which development cost charges are levied under this Law;

"dwelling unit" means one (1) or more habitable rooms having collectively its or their own entrance from the exterior, used or intended to be used for the residential accommodation of not more than one (1) person or family, having provision for living, sleeping and sanitary facilities and containing or providing for not more than one (1) cooking facility;

"expenditure law" means an expenditure law enacted by Council under paragraph 5(1)(b) of the Act;

"gross floor area" means the combined area of all floors within a building, including any basement or cellar, measured to the inside surface of the exterior walls of the building;

"gross site area" means the total area of land that is proposed for development in an application for a development permit under the Subdivision Law;

"highway" means a road, street, lane, walkway, trail, path, thoroughfare, bridge, viaduct and any other way open to public use, other than a private road on a parcel held under a certificate of possession that is not open for use by the public;

"improvement" means any building, fixture, structure or similar thing constructed, placed or affixed on, in or to land, or water over land, or on, in or to another improvement and includes a manufactured home;

"industrial development" means a development used or intended to be used for manufacturing, production, assembly, testing, warehousing, distribution or storage of products or materials;

"interest", in relation to reserve lands, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

"manufactured home" means a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to

(a) be moved from one place to another by being towed or carried, and

(b) provide

(i) a dwelling house or premises,

(ii) a business office or premises,

(iii) accommodation for any other purpose,

(iv) shelter for machinery or other equipment, or

(v) storage, workshop, repair, construction or manufacturing facilities;

"parcel" means any lot, block, or other area on the reserves but does not include a Road or portion thereof unless the Road is included within the surveyed parcel;

"parcel area" means the total area of land of a parcel;

"parcel holder" means the registered lessee of a parcel or a person holding a certificate of possession for a parcel;

"person" includes an individual or group of individuals, a partnership, syndicate, association, corporation and the personal or other legal representatives of a person;

"reserve" means Penticton I.R. 1, 2, and 3A set apart for the use and benefit of the Band within the meaning of the *Indian Act*;

"residential (multi-family) development" means a development for residential purposes that does not include single-family residential, or two-family residential development;

"resolution" means a motion passed and approved by a majority of Council present at a duly convened meeting, which said meeting may be conducted by audio or video conferencing, or both, and may be executed in counterparts and sent electronically;

"road" means a highway that affords the principal means of vehicular access to abutting parcels, and includes a road allowance;

"secondary suite" means an additional dwelling unit that is contained within a single-family residential building;

"single-family residential" means a detached building consisting of only one (1) dwelling unit, and may also include a secondary suite;

"structure" means a construction of any kind whether fixed to, supported by or sunk into land or water;

"subdivision" means the division of land into two (2) or more parcels by any means, including by survey plan or by a metes and bounds description;

"subdivision approval" means the final approval of the Band of a subdivision of a parcel as detailed in the Subdivision Law;

"Subdivision Law" means the Band's Subdivision, Development and Servicing Bylaw No. 2020-01, as may be amended or replaced from time to time;

"two-family residential" means a detached building consisting of two (2) dwelling units;

"Zone A" means that part of the map in Schedule I shown outlined in bold;

"Zone B" means that part of the map in Schedule I shown in hatch.

(2) For greater certainty, an interest, in relation to reserve lands, includes improvements.

(3) In this Law, references to a Part (e.g. Part I), section (e.g. section 1), subsection (e.g. subsection 2(1)), paragraph (e.g. paragraph 3(5)(a)) or Schedule (e.g. Schedule I) is a reference to the specified Part, section, subsection, paragraph or Schedule of this Law, except where otherwise stated.

PART III

ADMINISTRATION

Administration

3.(1) Council must appoint an administrator to administer and enforce this Law on the terms and conditions set out in the resolution.

(2) The administrator must administer and enforce this Law and undertake such further duties as specified by Council.

(3) The administrator must maintain a separate development cost charge reserve fund for each development cost charge class under this Law.

(4) The administrator must maintain records for all development cost charges imposed and collected.

(5) The administrator must report annually to Council on the administration of this Law, which report must include, for each development cost charge class,

(a) the amount of development cost charges received;

(b) the expenditures from each development cost charge reserve fund;

(c) the balance in each development cost charge reserve fund account at the start and at the end of each calendar year;

(d) any exemptions, credits, rebates or refunds of development cost charges;

(e) a summary of the works completed and the works to be undertaken within each development cost charge class.

(6) The administrator must make available to the public, upon request, the considerations, information and calculations used to determine the development cost charges imposed under this Law, except that information respecting the contemplated acquisition costs and locations of specific properties need not be provided.

PART IV

IMPOSITION, CALCULATION AND PAYMENT OF DEVELOPMENT COST CHARGES

Establishment and Imposition of Development Cost Charges

4. (1) The following development cost charge classes are established:

(a) in Zone A:

(i) transportation;

(b) in Zone B:

(i) sewer,

(ii) water, and

(iii) transportation.

(2) Development cost charges are hereby imposed on, and must be paid by, every person who obtains

(a) a development approval; or

(b) a subdivision approval.

Calculation of Development Cost Charges

5.(1) Where a person, in compliance with all applicable laws, bylaws and policies, applies for

(a) a development approval, or

(b) a subdivision approval,

in Zone A or Zone B of Penticton Indian Reserve No. 1, the administrator must calculate the amount of development cost charges payable in relation to the application in accordance with this section and using the applicable charges and formula set out for Zone A or for Zone B, as applicable, in Schedule I.

(2) Where a type of development is not identified in Schedule I, the amount of development cost charges to be paid to the Band must be equal to the development cost charges that would have been payable for the most comparable type of development, as determined by the administrator.

(3) Where a development contains two (2) or more uses, the development cost charges must be calculated separately for each use within the development, and the total amount payable must be the sum of the development cost charges levied for all uses in the development.

(4) Where required by the administrator, the developer must provide to the administrator the calculation of the development cost charges payable under this Law, as determined and certified by a professional engineer who is registered and licensed under applicable provincial legislation.

Payment of Development Cost Charges

6.(1) Development cost charges levied under this Law must be paid in full to the Band at the time of, and as a condition of,

(a) development approval; or

(b) subdivision approval.

(2) In the case of a phased development, development cost charges are payable only in respect of the phase respecting which a subdivision approval or development approval is given.

Application of Development Cost Charges

7.(1) Despite subsections 4(2) and 6(1), no development cost charges are required to be paid where

(a) the development does not impose any new capital cost burdens on the Band; or

(b) development cost charges have previously been paid for the same development unless, as a result of a further development, new capital cost burdens will be imposed on the Band.

(2) For the purposes of subsection (1), a development imposes new capital cost burdens where it creates any new or additional demand on, or usage of, an existing or planned service or facility that is in a development cost charge class.

Exemptions from Development Cost Charges

8. Despite paragraph 4(2)(a), no development cost charges are required to be paid where a development approval authorizes the construction, alteration or extension of a building that will be owned and occupied by a member of the Band as a single-family residential dwelling unit, provided that in such cases the Band must pay, using moneys that are not local revenues, into the appropriate development cost charge reserve funds an amount equivalent to the development cost charges that would have been payable had the exemption not applied.

Developer Contributions under Written Agreement

9.(1) If a developer has, pursuant to a written agreement with the Band, provided or paid the cost of providing a specific service outside the boundaries of the parcel being developed that is included in the calculations used to determine the amount of development cost charges, the cost of the service must be deducted from the development cost charges otherwise owing for that development cost charge class.

(2) Where a service is included in the calculations used to determine the amount of a development cost charge and a developer has, pursuant to a written agreement with the Band,

(a) provided that service outside the boundaries of the parcel being developed, and

(b) provided the service to a standard that exceeds the standard required by the Band,

the Band must offer a rebate of development cost charges for the incremental portion of costs beyond the standard required by the Band for that development cost charge class.

PART V

USE OF DEVELOPMENT COST CHARGES

Management and Use of Development Cost Charges

10.(1) The Band must establish by an expenditure law a separate development cost charge reserve fund for each development cost charge class.

(2) All development cost charges paid to the Band under this Law, including for greater certainty amounts paid under section 6, must be deposited in the appropriate development cost charge reserve fund established for each development cost charge class.

(3) Money in development cost charge reserve funds, together with interest on it, must be used only

(a)to pay the capital costs of providing, constructing, altering, improving, replacing or expanding sewer, water, and transportation facilities that relate directly or indirectly to the development in respect of which the development cost charge was collected;

(b) to pay the principal of and interest on a debt incurred by a Band as a result of an expenditure under paragraphs (a);

(c) to pay a person subject to a development cost charge for some or all of the capital costs the person incurred in completing a project described in paragraph (a) if

(i) the project was completed under a written agreement between the person and the Band, and

(ii) the project is included in the calculations used to determine the amount of that development cost charge.

(4) All payments made under subsection (3) must be authorized by an expenditure law.

(5) Moneys in a development cost charge reserve fund that are not immediately required may be invested or reinvested by the administrator only in one or more of the following:

(a) securities of Canada or of a province;

(b) securities guaranteed for principal and interest by Canada or by a province;

(c) securities of a municipal finance authority or the First Nations Finance Authority;

(d) investments guaranteed by a bank, trust company or credit union; or

(e) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union.

Transfer of Development Cost Charges

11.(1) The Band may transfer moneys in a development cost charge reserve fund to another development cost charge reserve fund, where the amount to the credit of a reserve fund is greater than required for the purpose for which the reserve fund was established.

(2) A transfer under subsection (1) must be authorized by an expenditure law.

Borrowing from a Development Cost Charge Reserve Fund

12.(1) The Band may borrow from a development cost charge reserve fund for the purposes of a capital purpose reserve fund where

(a) the moneys in the originating reserve fund are not currently required for its purpose; and

(b) the Band has a reserve fund established for a capital purpose for which it requires the moneys.

(2) Where moneys are borrowed under subsection (1), the Band must repay to the originating reserve fund, no later than the time when the money is needed for the purposes of that reserve fund,

(a) the amount borrowed; and

(b) an amount equivalent to the interest that would have been earned on the amount had it remained in the originating reserve fund.

(3) Interest paid under paragraph (2)(b) must be at a rate that is at or above the prime lending rate set from time to time by the principal banker to the Band.

(4) In the event the Board assumes third-party management of the Band's local revenue account in accordance with the Act, the Board may, acting in the place of the Council, borrow moneys from a development cost charge reserve fund where it determines that such borrowing is necessary to meet the financial obligations of the Band.

(5) Borrowing from a reserve fund under this section must be authorized by an expenditure law.

PART VI

REFUNDS OF DEVELOPMENT COST CHARGES

Refund of Development Cost Charges

13.(1) A developer may apply to the administrator for a refund of development cost charges previously paid by the developer in whole or in part when the subdivision or development approval is cancelled, provided that an application for a refund is made within six (6) months of the cancellation, as the case may be, and a new or replacement subdivision or development approval application has not been received or approved in respect of the parcel.

(2) Upon application under subsection (1), the administrator must determine whether the applicant qualifies for a refund of development cost charges and, if so, refund the development cost charges.

PART VII

COMPLAINTS TO ADMINISTRATOR

Complaints to Administrator

14.(1) A developer may, within seven (7) days of receiving from the administrator the calculation of development cost charges under subsection 5(1), make a complaint to the administrator in writing.

(2) A complaint may only be made respecting one or more of the following:

(a) there is an error or omission respecting the calculation of the development cost charges; and

(b) an exemption has been improperly applied.

(3) A complaint must be made in the form set out in Schedule II and delivered to the administrator and must include any reasons in support of the complaint.

(4) Within twenty-one (21) days after receipt of a complaint, the administrator must review the matter and attempt to resolve the complaint.

(5) If the administrator concludes that the development cost charges were improperly calculated or levied and the developer is owed a refund, the administrator must correct the error and refund to the developer the excess development cost charges paid.

(6) If the administrator concludes that the development cost charges were improperly calculated or levied and that further amounts are owed by the developer, the developer must pay the balance of the development cost charges owing within ten (10) days of notice from the administrator.

(7) The administrator must provide a report to Council in respect of each complaint received under this section, which report must include the nature of the complaint and the resolution of the complaint, if any.

(8) Where a developer makes a complaint under this Law, the developer must pay when due the full amount of the development cost charges assessed and such payment will not prejudice the developer's rights in respect of the complaint.

PART VIII

GENERAL PROVISIONS

Validity

15. Nothing under this Law must be rendered void or invalid, nor must the liability of any person to pay a development cost charge under this Law be affected by

(a) an error or omission in a valuation or a determination made by the administrator; or

(b) a failure of the Band or the administrator to do something within the required time.

Notices

16.(1) Where in this Law a notice is required to be given and where the method of giving the notice is not otherwise specified, it must be given

(a) by mail to the recipient's ordinary mailing address;

(b) where the recipient's address is unknown, by posting a copy of the notice in a conspicuous place on the recipient's property; or

(c) by personal delivery or courier to the recipient or to the recipient's ordinary mailing address.

(2) Except where otherwise provided in this Law,

(a) a notice given by mail is deemed received on the fifth day after it is posted;

(b) a notice posted on property is deemed received on the second day after it is posted; and

(c) a notice given by personal delivery is deemed received upon delivery.

Interpretation

17.(1) The provisions of this Law are severable, and where any provision of this Law is for any reason held to be invalid by a decision of a court of competent jurisdiction, the invalid portion must be severed from the remainder of this Law and the decision that it is invalid must not affect the validity of the remaining portions of this Law.

(2) Where a provision in this Law is expressed in the present tense, the provision applies to the circumstances as they arise.

(3) Words in this Law that are in the singular include the plural, and words in the plural include the singular.

(4) This Law must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

(5) Reference in this Law to an enactment is a reference to the enactment as it exists from time to time and includes any regulations made under the enactment.

(6) Headings form no part of the enactment and must be construed as being inserted for convenience of reference only.

Repeal

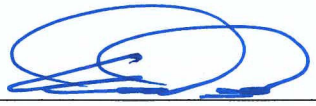
18.(1) The *Penticton Indian Band Development Charges Law, 2018* is hereby repealed in its entirety.

Force and Effect

19. This Law comes into force and effect on the day after it is approved by the First Nations Tax Commission.

THIS LAW IS HEREBY DULY ENACTED by Council on the 1st day of December, 2020, at the Penticton Indian Band, in the Province of British Columbia.

A quorum of Council consists of five (5) members of Council.

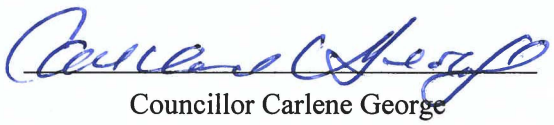


Chief Greg Gabriel

Councillor Elliott Tonasket

Councillor Clint George

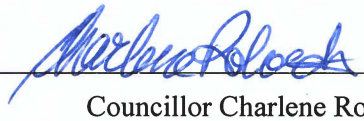
Councillor Suzanne Johnson



Councillor Carlene George

Councillor Fred Kruger

Councillor Vivian Lezard



Councillor Charlene Roberds

Councillor Inez Pierre

SCHEDULE I

CALCULATION OF DEVELOPMENT COST CHARGES

PART 1 – CHARGES APPLICABLE FOR ZONE "A" SHOWN ON MAP FOLLOWING

Development cost charges for TRANSPORTATION FACILITIES

1. Development cost charges are payable for transportation facilities as follows:

Type of Development	Development cost charge
Single-family residential	$ 549 per dwelling unit
Two-family residential	$ 549 per dwelling unit
Residential (multi-family)	$ 355 per dwelling unit
Commercial Development	$ 7.53 per metre^2 of gross floor area
Industrial Development	$ 7.53 per metre^2 of gross site area

2. The assist factor for transportation facilities is zero percent (0%).

PART 2 – CHARGES APPLICABLE FOR ZONE "B" SHOWN ON MAP FOLLOWING

Development cost charges for TRANSPORTATION FACILITIES

1. Development cost charges are payable for transportation facilities as follows:

Type of Development	Development cost charge
Single-family residential	$ 549 per dwelling unit
Two-family residential	$ 549 per dwelling unit
Residential (multi-family)	$ 355 per dwelling unit
Commercial Development	$ 7.53 per metre2 of gross floor area
Industrial Development	$ 7.53 per metre2 of gross site area

2. The assist factor for transportation facilities is zero percent (0%)

Development cost charges for WATER FACILITIES

1. Development cost charges are payable for water facilities as follows:

Type of Development	Development cost charge
Single-family residential	$ 1,740 per dwelling unit
Two-family residential	$ 1,740 per dwelling unit
Residential (multi-family)	$ 1,438 per dwelling unit
Commercial Development	$ 6.81 per metre^2 of gross floor area
Industrial Development	$ 6.81 per metre^2 of gross site area

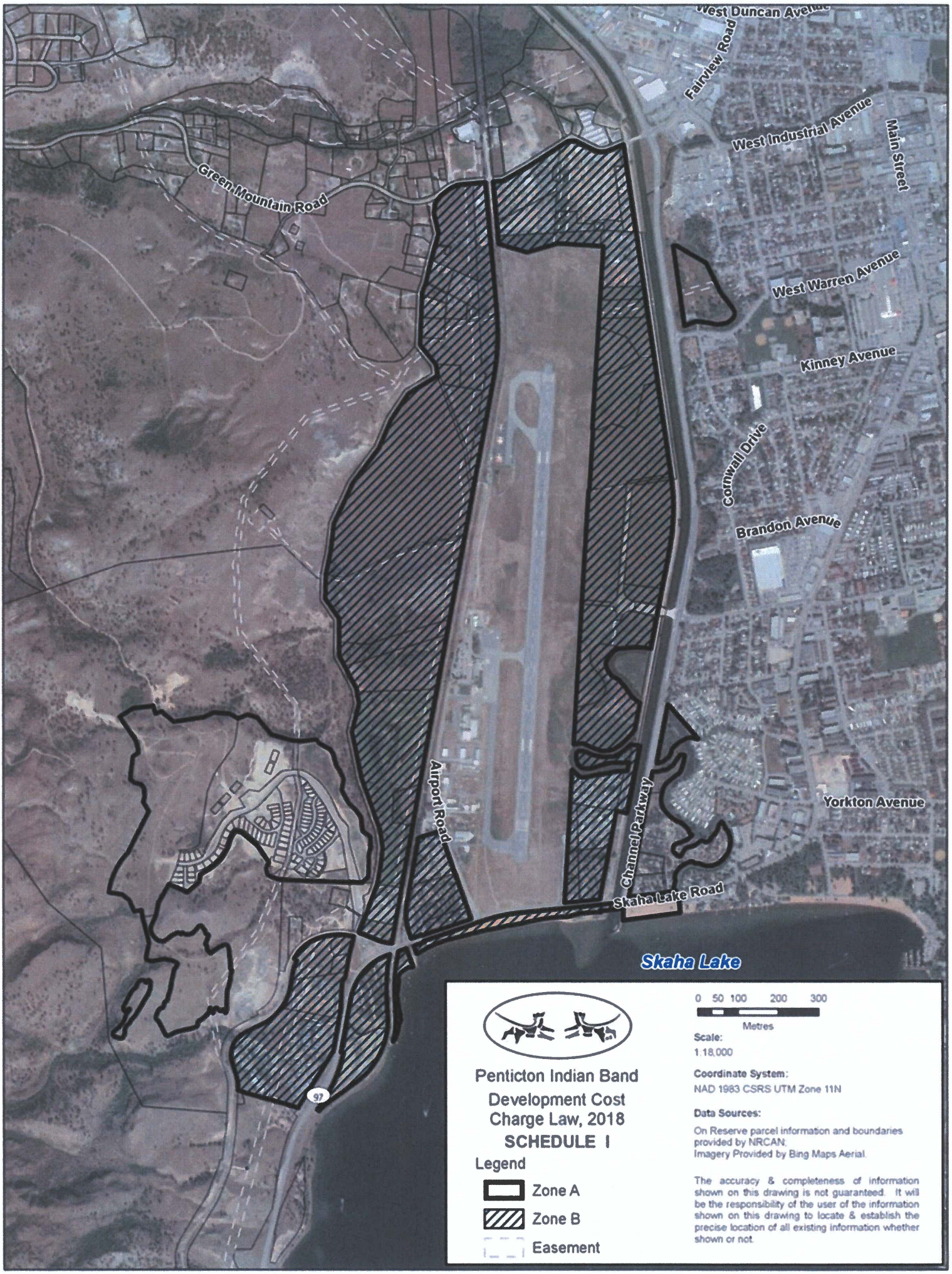
2. The assist factor for water facilities is zero percent (0%).

Development cost charges for SEWER FACILITIES

1. Development cost charges are payable for sewer facilities as follows:

Type of Development	Development cost charge
Single-family residential	$ 344 per dwelling unit
Two-family residential	$ 344 per dwelling unit
Residential (multi-family)	$ 284 per dwelling unit
Commercial Development	$ 1.94 per metre^2 of gross floor area
Industrial Development	$ 1.94 per metre^2 of gross site area

2. The assist factor for sewer facilities is zero percent (0%).


West Duncan Avenue
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West Industrial Avenue
Main Street
Green Mountain Road
West Warren Avenue
Kinney Avenue
Cornwall Drive
Brandon Avenue
Airport Road
Channel Parkway
Yorkton Avenue
Skaha Lake Road
Skaha Lake
97
Penticton Indian Band
Development Cost
Charge Law, 2018
SCHEDULE I
Legend
Zone A
Zone B
Easement
0 50 100 200 300
Metres
Scale:
1:18,000
Coordinate System:
NAD 1983 CSRS UTM Zone 11N
Data Sources:
On Reserve parcel information and boundaries provided by NRCAN;
Imagery Provided by Bing Maps Aerial.
The accuracy & completeness of information shown on this drawing is not guaranteed. It will be the responsibility of the user of the information shown on this drawing to locate & establish the precise location of all existing information whether shown or not.

SCHEDULE II

COMPLAINT TO ADMINISTRATOR RESPECTING
DEVELOPMENT COST CHARGES

TO: Administrator for the Penticton Indian Band
RR# 2 Site 80 Comp 19
Penticton, British Columbia V2A 6J7

PURSUANT to the provisions of the *Penticton Indian Band Development Cost Charges Law, 2020,* I hereby make a complaint respecting the imposition of development cost charges on the development on the following interest in reserve lands:

[description of the development/interest]

This complaint is based on the following reasons:

(1)

(2)

(3)

(describe the reasons in support of the complaint in as much detail as possible)

Applicant's mailing address to which a reply to the complaint is to be sent:

_____

_____

_____ _____

Name of Complainant (please print) Signature of Complainant (or representative)

Dated: _____, 20__ .