STANDARDS FOR
FIRST NATION DEVELOPMENT COST CHARGES LAWS

[Consolidated to 2011-06-14]

PART I
PREAMBLE

WHEREAS:

A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;

B. Standards are established by the Commission to further the policy objectives of the Commission and the Act, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues; and

C. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

PART II
PURPOSE

These Standards set out the requirements that must be met for First Nation development cost charges laws enacted under subparagraph 5(1)(a)(v) of the Act. These Standards are used by the Commission in its review and approval of First Nations' development cost charges laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. These Standards are intended to support a more comprehensive First Nation fiscal framework within Canada.

PART III
AUTHORITY AND PUBLICATION

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

PART IV

APPLICATION

These Standards apply to every development cost charges law submitted to the Commission for approval under the Act.

PART V

DEFINITIONS

In these Standards:

"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 to administer a Law;

"assist factor" means that percentage of the capital costs of each development cost charge class that will be paid by the First Nation, as determined by the First Nation;

"building" means any construction 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 First Nation that are directly related to the work and meet the requirements of subsection 3.6;

"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;

"Commission" means the First Nations Tax Commission established under the Act;

"developer" means a person undertaking a development on the reserve;

"development" means the subdivision of a parcel or the construction, alteration or extension of a building or structure on the reserve;

"development cost charge" means a development cost charge levied under a Law;

"development cost charge class" means a class of works, or park and recreation land acquisition and improvement for which development cost charges may be collected under a Law;

"First Nation" means a band named in the schedule to 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 a parcel;

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

"institutional development" means a building or structure used or intended to be used only on a non-profit basis for cultural, recreational, social, religious, governmental, public hospital or educational purposes, and also includes any building or structure that is serviced with sewer, water or drainage and which is not a residential, commercial or industrial development;

"interest in land" or "property" means land or improvements, or both, in a reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

"Law" means a development cost charges law enacted under subparagraph 5(1)(a)(v) of the Act;

"long-term capital plan" means a plan approved by Council that sets out the First Nation's requirements for infrastructure development for the purposes for which development cost charges are to be collected and may include a physical development plan, an official community plan or a capital expenditure plan;

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

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

(b) to 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;

"manufactured home park development" means a residential development where spaces and utilities are provided for two (2) or more manufactured homes;

"parcel" means a parcel, block or other defined area of property on the reserve;

"park improvements" means fencing, landscaping, drainage and irrigation, trails, restrooms, changing rooms, and playground and playing field equipment;

"Province" refers to the province in which the reserve is situated;

"reserve" means any land set apart for the use and benefit of a First Nation within the meaning of the *Indian Act*;

"residential dwelling unit" means a self-contained residential unit, including sleeping, living, cooking and sanitary facilities, designed and used for the accommodation of only one (1) person or family;

"residential (multi-family) development" means a development that results in more than three (3) residential dwelling units on a parcel and includes an apartment, strata property and any other building used for residential living, but does not include a hotel or motel;

"residential (single family) development" means a development comprising single family residential dwelling units;

"resolution" means a motion passed and approved by a majority of Council present at a duly convened meeting;

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

"Taxation Law" means a law made by a First Nation under paragraph 5(1)(a) of the Act.

Except as otherwise provided in these Standards, words and expressions used in these Standards have the same meaning as in the Act.

[am. FNTC Resolution 2011-06-14.]

PART VI

STANDARDS

1. Administration

1.1 The Law must provide for the appointment of an administrator by resolution to

(a) administer and enforce the Law;

(b) establish and maintain a separate development cost charge reserve fund for each development cost charge class;

(c) maintain records for all development cost charges imposed and collected; and

(d) undertake such further duties as set out in the Law or as specified by Council.

1.2 The Law must require the administrator to report annually to Council on the administration of the Law, which report must include, for each development cost charge class,

(a) the amount of development cost charges received;

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

(c) the balance in the 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) the amount of all outstanding installment payments of development cost charges; and

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

1.3 The Law must require the administrator to make available to the public, upon request, the considerations, information and calculations used to determine the development cost charges imposed under the Law, other than information respecting the contemplated acquisition costs and locations of specific properties.

2. Application of Law

2.1 The Law must apply to the entire reserve.

2.2 Notwithstanding subsection 2.1, the Law may apply to a portion of the reserve where application to the entire reserve would create a significant disparity between those who pay the development cost charges and those who benefit from the infrastructure funded by the development cost charges.

3. Amount of Development Cost Charges

3.1 The Law must provide for development cost charges to be levied only to pay the capital costs of one or more of the following development cost charge classes:

(a) providing, constructing, altering, or expanding sewage, water, stormwater and transportation facilities, and

(b) providing and improving park and recreation land,

to service, directly or indirectly, the development for which the development cost charge is being imposed.

3.2 The capital costs used to determine the development cost charges levied in the Law must be supported by

(a) a long-term capital plan, or,

(b) a local government regional growth strategy, official community plan, or other regional development plan, where the First Nation

(i) participates in regional planning; and

(ii has a service agreement with one or more adjacent local governments respecting services for which the First Nation levies development cost charges.

3.2.1 Where a First Nation

(a) has a service agreement with an adjacent local government respecting services for which the First Nation levies development cost charges, and

(b) the service agreement requires the First Nation to pay to the local government all or a portion of development costs charges it collects in respect of those services,

the Law may establish development cost charges for those services equivalent to the development cost charges established by the local government for those services.

3.3 The Law must establish similar development cost charges for all developments that impose similar capital cost burdens on the First Nation, but may vary with respect to one or more of the following:

(a) different zones or different defined or specified areas;

(b) different uses;

(c) different capital costs as they relate to different classes of development; and

(d) different sizes or different numbers of lots or units in a development.

3.4 The Law must establish development cost charges that

(a) are not excessive in relation to the capital cost of prevailing standards of service in jurisdictions adjacent to the reserve;

(b) will not deter development on the reserve; and

(c) will not discourage the construction of reasonably priced housing or the provision of reasonably priced serviced land on the reserve.

3.5 The Law must establish development cost charges that reflect the following considerations:

(a) the future land use patterns and development;

(b) the phasing of works and services; and

(c) the provision of park and recreation land.

3.6 The Law may establish development cost charges that include interest costs as part of the capital costs for a development cost charge class only where the First Nation must construct the development cost charge-funded infrastructure in advance of sufficient development cost charges being collected, and only where

(a) the fixed-capacity infrastructure, such as sewer and water, must be constructed before development can occur; or

(b) the infrastructure must be provided in an area with no services, to enable development to occur.

3.7 Where interest costs are included in the capital costs of a development cost charge under subsection 3.6, the interest rate used must not exceed the First Nations Finance Authority debenture rate established at the time Council makes the Law.

[am. FNTC Resolution 2011-06-14.]

4. Calculation of Development Cost Charges

The Law must include the following provisions:

(a) the development cost charges payable per unit of development for each development cost charge class and for each type of development;

(b) how development cost charges are assessed for each development cost charge class;

(c) for development types not specifically identified in the Law, a provision that the amount of development cost charges payable 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;

(d) for developments that contain two (2) or more uses, a provision that 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; and

(e) where a building permit relates only to the expansion of an existing development, a provision that the development cost charges must be levied only on that portion of the development that expands the existing development.

5. Units of Development

The Law must provide that development cost charges are calculated based on the following units of development, as applicable:

(a) for a residential (single family) development, on a per residential dwelling unit, a per square metre of parcel area, or a per parcel basis;

(b) for a residential (multi-family) development, on a per residential dwelling unit or a per square metre of gross floor area basis;

(c) for a commercial development, on a per square metre of gross floor area basis;

(d) for an institutional development, on a per square metre of gross floor area basis;

(e) for an industrial development, on a per square metre of gross site area basis; and

(f) for a manufactured home park development, on a per pad basis.

6. Assist Factor

Where a First Nation has an assist factor as part of its development cost charge calculation, the assist factor must be set out in the Law.

7. Payment of Development Cost Charges

7.1 Subject to subsection 7.2, the Law must provide for the imposition and payment in full of development cost charges at the time of issuance of a building permit authorizing the construction, alteration or extension of a building or structure.

7.2 The Law may allow the imposition and payment in full of development cost charges at the time of subdivision approval

(a) for developments other than residential developments; and

(b) for residential developments, provided the First Nation has given notice to potential developers of the proposed Law and given those developers an opportunity to provide input to the First Nation on the potential impacts of such a requirement.

7.3 The Law must provide that where a development occurs in phases, development cost charges must be paid at the time of subdivision approval or building permit issuance in respect of each phase of the development.

7.4 Notwithstanding subsection 7.1, the Law may provide for the payment of development cost charges in installments where requested by a developer and approved by Council in its sole discretion, as follows:

(a) at least one-third (1/3) of the development cost charges must be paid at the time of subdivision approval or building permit issuance, one-half (1/2) of the balance must be paid within one (1) year of the date of subdivision approval or building permit issuance and the balance must be paid in full within two (2) years of the date of subdivision approval or building permit issuance;

(b) if a developer fails to pay an installment within any time required for payment, the total balance becomes due and payable immediately;

(c) interest is not payable on the unpaid balance of a development cost charge until it becomes due and payable at which time interest is payable from the due date until payment is received, at a rate set out in the Law, not to exceed fifteen percent (15%); and

(d) Council may require a developer to provide, at the time of the first installment payment, an irrevocable letter of credit or undertaking from a bank, credit union or a trust company registered under the *Financial Institutions Act* (British Columbia), or a bond of a surety licensed under the *Insurance Act* (British Columbia), or a security duly assigned, which ensures to the satisfaction of Council that upon default the balance of the unpaid development cost charge will be recoverable from the person, the bank, the surety or from the proceeds of the realization of the security, as the case may be.

8. Development Cost Charge Exemptions

The Law must provide for exemptions from development cost charges in each of the following circumstances:

(a) the development does not impose any new capital cost burden on the First Nation;

(b) a development cost charge has previously been paid for the same development, unless, as a result of a further development, new capital cost burdens will be imposed on the First Nation;

(c) the building permit authorizes the construction, alteration or extension of a building or part of a building that is, or will be after construction, alteration or extension, exempt from taxation under the Taxation Law as a place of public worship;

(d) the value of the work authorized by a building permit does not exceed the amount specified in the Law, which amount must be not less than fifty thousand dollars ($50,000); and

(e) Council has, by resolution, exempted development from development cost charges, provided that in such a case the First Nation must pay the exempted developer's portion of the costs from general revenue into the appropriate development cost charge reserve fund.

9. Development Cost Charge Credits and Rebates

9.1 The Law must provide that if a developer has, with the approval of the First Nation, provided or paid the cost of providing a specific service outside the boundaries of the parcel being subdivided or built upon, and that service is included in the calculations used to determine the amount of a development cost charge, the First Nation must give a credit to the developer by deducting the developer's costs of providing that service from the development cost charges payable for the applicable development cost charge class.

9.2 The Law must provide that where a service is included in the calculations used to determine the amount of a development cost charge and a developer has, with the approval of a First Nation,

(a) provided that service outside the boundaries of the parcel being subdivided or built upon, and

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

the First Nation must offer a development cost charge rebate for the incremental portion of costs beyond the local standard required for that development cost charge class.

10. Development Cost Charge Refunds

The Law must provide for a refund to a developer of development cost charges paid in respect of a development where the subdivision is not proceeding or the building permit is cancelled, as the case may be, provided

(a) the developer makes an application for a refund within six (6) months of the developer's abandonment of the subdivision or building permit cancellation, as the case may be; and

(b) a new or replacement subdivision application or building permit application has not been received or approved in respect of the development.

11. Use of Development Cost Charges

11.1 The Law must require all development cost charges collected by the First Nation to be deposited in a separate development cost charge reserve fund established for each development cost charge class.

11.2 The Law must require all expenditures of development cost charge funds to be authorized by an expenditure law under paragraph 5(1)(b) of the Act.

11.3 The Law must provide that moneys in a development cost charge reserve account, plus interest earned on those moneys, can be used only for one or more of the following:

(a) to pay the capital costs of providing, constructing, altering, improving, replacing or expanding sewer, water, stormwater 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 capital costs of

(i) acquiring park and recreation land or reclaiming land as park and recreation land, and

(ii) providing park improvements on park and recreation land,

subject to the restriction that the capital costs must relate directly or indirectly to the development in respect of which the development cost charge was collected;

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

(d) 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) or (b) if

(i) the project was completed under an agreement between the person and the First Nation, and

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

11.4 For clarity, payments under paragraphs 11.3(a) and (b) may be made to a local government where the First Nation has a service agreement with the local government that requires the First Nation to

(a) pay to the local government all or a portion of development costs charges it collects in respect of a development; or

(b) otherwise make payments to the local government,

to contribute to the capital costs of facilities used to provide services to the development in respect of which the development cost charge was collected, or to acquire or reclaim park and recreation land or provide park improvements on that land.

[am. FNTC Resolution 2011-06-14.]

12. Transfer of Development Cost Charges

12.1 The Law may permit moneys in a development cost charge reserve fund to be transferred from that 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.

12.2 The Law must require all transfers of development cost charge moneys to be authorized by an expenditure law under paragraph 5(1)(b) of the Act.

13. Borrowing of Development Cost Charges

13.1 The Law may permit the First Nation to borrow from a development cost charge reserve fund for the purposes of another capital purpose reserve fund only on the following conditions:

(a) the reserve funds are not currently required for its purpose;

(b) the First Nation has another reserve fund established for a capital purpose;

(c) the First Nation must repay to the first reserve fund, no later than the time when the money is needed for the purposes of that reserve fund,

(i) the amount used, and

(ii) an amount equivalent to the interest that would have been earned on the amount had it remained in the first reserve fund; and

(d) interest paid under paragraph (c) 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 First Nation.

13.1.1 In addition to borrowing permitted under subsection 13.1, the Law must permit the First Nation to borrow from a development cost charge reserve fund where the First Nations Financial Management Board has assumed third-party management of the First Nation's local revenue account and, acting in the place of the Council, has determined that moneys must be borrowed from a development cost charge reserve fund to meet the financial obligations of the First Nation.

13.2 The Law must require all borrowing of development cost charge moneys to be authorized by an expenditure law under paragraph 5(1)(b) of the Act.

[am. FNTC Resolution 2011-06-14.]

14. Investing of Development Cost Charges

Where the Law provides for the investing of moneys in a development cost charge reserve fund that are not immediately required, it must allow for investment 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.

15. Complaints

The Law must provide for a complaints process that allows a developer to object to the development cost charges payable in respect of a development on at least the following grounds:

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

(b) an exemption from development cost charges has been improperly applied.

PART VII

COMING INTO FORCE

These Standards are established and in effect as of June 10, 2009.

PART VIII

ENQUIRIES

All enquiries respecting these Standards should be directed to:

First Nations Tax Commission
321 – 345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857