

CITY OF NIAGARA FALLS

By-law No. 2009 - 120

A By-law with respect to development charges.

WHEREAS the City of Niagara Falls will experience growth through development and redevelopment;

AND WHEREAS development and redevelopment requires the provision of physical and social services by the City;

AND WHEREAS Council desires to ensure that the capital costs of meeting development related demands on municipal services does not place a financial burden on the City or its existing taxpayers, while at the same time ensuring new development contributes no more than the net capital cost attributable to providing the historical level of municipal services, less benefit to existing development and other statutory deductions;

AND WHEREAS the *Development Charges Act, 1997* permits Council to pass a by-law for the imposition of development charges against land to pay for increased capital costs required because of increase needs for services arising from development of the area to which the by-law applies, and any one or more of the actions set out in subsection 2(2) of the *Development Charges Act, 1997* are required for such development;

AND WHEREAS Council had before it a report entitled the “City of Niagara Falls Development Charge Background Study” (the “Study”) submitted by Watson & Associates Economists Ltd., dated June 12, 2009;

AND WHEREAS Council has reviewed the Study and has considered the comments of the public at a public meeting duly called on June 29, 2009 to consider the enactment of a by-law under the Development Charges Act, 1997;

AND WHEREAS the proposed by-law for the imposition of development charges against land has changed following the public meeting, and Council has determined that no further public meeting is necessary.

AND WHEREAS the Council of the Corporation of the City of Niagara Falls has heard from all persons who applied to be heard no matter whether in objection to, or in support of, the development charge policies proposed in the study at the public meeting held on June 29, 2009.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:

1. In this by-law:

- (1) “Act” means the Development Charges Act, 1997, S.O. 1997, c.27 as amended;
- (2) “affordable housing”: means affordable housing provided by a proponent where funding is available and an agreement exists between an upper tier level of government(s) and/or its respective agencies as boards for such purpose.
- (3) “agricultural use” means use or intended use for bona fide farming purposes:
 - (a) including (but limited to):
 - (i) cultivation of crops, whether on open land or in greenhouses including (but not limited to) fruit, vegetables, herbs, grains, field crops, sod, trees, shrubs, flowers, and ornamental plants.
 - (ii) raising of animals, including (but not limited to) cattle, horses, pigs, poultry, livestock, fish; and
 - (iii) animal husbandry, dairying, equestrian activities, horticulture, following, pasturing, and market gardening.
 - (b) but excluding:
 - (i) retail sales activities; including but not limited to restaurants, banquet facilities, hospitality facilities and gift shops.
- (4) “board of education” has the same meaning as that specified in subsection 1 (1) of the *Education Act*, R.S.O. 1990, c.E.1, as amended;
- (5) “capital cost” means costs incurred or proposed to be incurred by the City or a local board directly, or by others on behalf of, and as authorized by, the City or local board;
 - (a) to acquire land or an interest in land, including the capital component of a leasehold interest;
 - (b) to improve land;
 - (c) to acquire, lease, construct or improve buildings and structures;

- (d) to acquire, lease, construct or improve facilities including,
 - (i) rolling stock with an estimated useful life of seven years or more;
 - (ii) furniture and equipment, other than computer equipment;
 - (iii) materials acquired for circulation, reference or information purposes by a library board as defined in the *Public Libraries Act*, R.S.O. 1990, c.P.44, as amended;
 - (e) to undertake studies in connection with any of the matters in subparagraphs (a) to (d) required for the provision of services designated in a development charge by-law within or outside the municipality, including interest on money borrowed to pay for costs described in the said subparagraphs; and
 - (f) for the development charge background study required under section 10 of the *Development Charges Act, 1997*;
- (6) “core tourist area” means the entire area identified as Core Tourist Area in schedule ‘F’ to this by-law;
 - (7) “City” means The Corporation of the City of Niagara Falls;
 - (8) “Council” means the Council of The Corporation of the City of Niagara Falls;
 - (9) “development” includes re-development;
 - (10) “granny flat” means a one-unit detached, temporary residential structure, containing culinary and sanitary facilities that is ancillary to an existing residential structure and that is designed to be temporary;
 - (11) “local board” means a local board as defined in section 1 of the Municipal Affairs Act, R.S.O. 1990, c. M.46, as amended, other than a board as defined in subsection 1 (1) of the *Education Act*;
 - (12) “local services” means those services, facilities or things which are related to a plan of subdivision, are within the area to which the plan relates, or are installed or paid for by the owner as a condition of approval under section 53 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended;
 - (13) “net capital cost” means the capital cost, less capital grants, subsidies and other contributions made to a municipality or that the Council of the municipality anticipates will be made, including conveyances or payments under sections 41, 50

and 52 of the *Planning Act* in respect of the capital cost;

- (14) “non-urban” means the entire area identified as “non-urban area” in Schedule ‘B’ to this by-law;
- ((15) “owner” means the owner of land or a person who has made application for an approval for the development of land upon which a development charge is imposed;
- (16) “parking structure” means buildings or structures uses for the parking of motor vehicles;
- (17) “place of worship” means any building or part thereof that is exempt from taxation as a place of worship pursuant to the Assessment Act, R.S.O. 1990, c. A.31, as amended;
- (18) “rate” means the interest rate established weekly by the Bank of Canada for Treasury Bills having a term of 30 days;
- (19) “re-development” means the removal of buildings or structures or parts of buildings of structures from land, and the construction or erection of other buildings or structures or parts of buildings or structures thereon;
- (20) “regulation” means O.Reg. 82/98 of the *Development Charges Act, 1997*;
- (21) “services” means those services, facilities, accommodations and things designated in Schedule “A” to this by-law;
- (22) “services-in-lieu” means those services specified in an agreement made under section 17 of this by-law.
- (23) “servicing agreement” means an agreement to provide municipal services to specified lands within the municipality;
- (24) “urban area” means the entire area identified as “urban area” in Schedule “B” to this by-law.
- (25) “urban services” means any facilities outlined in the Study which relate to the provision of sidewalks, water works, sanitary sewer works and storm water management works.

**PART 1
APPLICATION**

2. (1) This by-law applies to all lands in the City of Niagara Falls, whether or not the land or use thereof is exempt from taxation under section 3 of the *Assessment Act*.
- (2) Notwithstanding subsection 2(1), this by-law does not apply to the development of land that is owned by and used for the purposes of:
 - (a) a board of education;
 - (b) the City, or any local board thereof;
 - (c) the Regional Municipality of Niagara, or any local board thereof, and
 - (d) the surrounding area municipalities, or any local board thereof.
3. (1) Subject to subsection 3(2), development charges shall apply and shall be calculated and collected in accordance with the provisions of this by-law on land to be developed for residential and non-residential uses, as herein defined, or any combination thereof, where the development requires:
 - (a) the passing of a zoning by-law or of an amendment thereto under section 34 of the *Planning Act*;
 - (b) the approval of a minor variance under section 45 of the *Planning Act*;
 - (c) a conveyance of land to which a by-law passed under subsection 50(7) of the *Planning Act* applies;
 - (d) the approval of a plan of subdivision under section 51 of the *Planning Act*;
 - (e) a consent under section 53 of the *Planning Act*;
 - (f) the approval of a description under section 50 of the *Condominium Act, 1998*, S.O. 1998, c.19, as amended; or
 - (g) the issuing of a permit under the *Building Code Act, 1992*, S.O. 1992, c.23, as amended, in relation to a building or structure.

- (2) Subsection 3(1) shall not apply in respect of a condition or agreement under section 51 or 53 of the *Planning Act* which provides for:
 - (a) local services related to a plan of subdivision or within the area to which the plan relates to be installed or paid for by the owner as a condition of approval under section 51 of the *Planning Act*; or
 - (b) local services to be installed or paid for by the owner as a condition of approval under section 53 of the *Planning Act*.
- 4. (1) Where two or more of the actions described in subsection 3(1) are required before land to which a development charge applies can be developed, only one development charge shall be calculated in accordance with the provisions of this by-law.
- (2) Notwithstanding subsection 4(1), if two or more of the actions described in subsection 3(1) occur at different times, and if the subsequent action has the effect of increasing the need for municipal services as designated in sections 7 and 11, and additional development charge shall be calculated and collected in accordance with the provisions of this by-law.

PART II
RESIDENTIAL DEVELOPMENT CHARGES

5. In this part:
- (1) “apartment” means a building consisting of one or more dwellings which is not a single detached dwelling, a semi-detached dwelling or a townhouse dwelling as defined herein;
 - (2) “development” includes re-development;
 - (3) “development charge” means residential development charge;
 - (4) “dwelling” means any part of a building or structure used or capable of being used as the residence of one or more persons, but does not include a hotel, motel or other commercial establishment;
 - (5) “dwelling unit” means a room or suite of two or more rooms designed or intended for use by an individual or by one family only as an independent and separate housekeeping establishment, and in which separate cooking and sanitary facilities are provided for the exclusive use of such occupants;
 - (6) “Region” means Regional Municipality of Niagara;
 - (7) “residential use” means single detached dwelling, semi-detached dwelling, townhouse dwelling and apartment as herein defined;
 - (8) “semi-detached dwelling” means a residential building divided vertically or horizontally into two separate dwelling units;
 - (9) “single detached dwelling” means the whole of a separate building which contains not more than one dwelling unit;
 - (10) “townhouse dwelling: means a building containing three or more separate dwelling units having a common wall between each two adjacent dwelling units each of which has an independent entrance, and includes any other residential building having not more than 8 dwelling units.
6. The urban area charge and non-urban area charge as set out in section 7, is applicable to those specific areas identified in Schedule ‘B’ of this by-law.
7. (1) Subject to the provisions of this part and this by-law, development charges against land to be developed for residential use shall be calculated and collected at the following rates:

Service	Residential Development Charge Per Unit Urban Area			Residential Development Charge Per Unit Non-Urban Area		
	Single & Semi Detached	Apartment	Townhouse	Single	Apartment	Townhouse
<u>Municipal Wide Charge</u>						
Development-related Studies	\$ 274	\$ 149	\$ 183	\$ 274	\$ 149	\$ 183
Parks and Recreation	\$ 1,848	\$ 1,005	\$ 1,232	\$ 1,848	\$ 1,005	\$ 1,232
Library	\$ 235	\$ 128	\$ 157	\$ 235	\$ 128	\$ 157
Roads and Related	\$ 1,451	\$ 789	\$ 967	\$ 1,457	\$ 789	\$ 967
Transit	\$ 295	\$ 161	\$ 197	\$ 295	\$ 161	\$ 197
<i>Sub-Total</i>	\$ 4,103	\$ 2,232	\$ 2,736	\$ 4,103	\$ 2,232	\$ 2,736
<u>Urban Area Charge</u>						
Sidewalks	\$ 131	\$ 71	\$ 87	N/A	N/A	N/A
Water	\$ 453	\$ 246	\$ 302	N/A	N/A	N/A
Sanitary Sewer	\$ 2,997	\$ 1,631	\$ 1,998	N/A	N/A	N/A
Storm Water Management	\$ 2,316	\$ 1,260	\$ 1,544	N/A	N/A	N/A
<i>Sub-Total</i>	\$ 5,897	\$ 3,208	\$ 3,931			
Total	\$ 10,000	\$ 5,440	\$ 6,667	\$ 4,103	\$ 2,232	\$ 2,736

- (2) Notwithstanding any other provision of this By-law, no development charge is imposed under this By-law respecting:
- (a) granny flats;
 - (b) lands and buildings which are entirely occupied and used or intended to be used for affordable housing units where the Region has entered into an agreement with a person for the provision of a municipal capital facility [municipal housing project facility] which provides for development charges exemptions as set out in section 110 of the *Municipal Act, 2001*, S.O.2001, c. 25, as amended.

- (3) Notwithstanding subsection 7(1), a 75% residential development charge exemption shall be granted for development of the type defined in paragraph 7(3)(a), and located within the area defined in paragraph 7(3)(b), and subject to such development meeting all of the conditions set out in paragraph 7(3)(c).
- (a) addition of residential units to existing residential, non-residential or mixed use buildings; and/or residential conversion of existing non-residential and mixed use buildings that creates additional residential units; and/or new residential developments on vacant lot/lots; and/or redevelopment of mixed use buildings that creates additional residential units.
 - (b) The Downtown Niagara Falls Community Improvement Project Area as outlined in Schedule “D” or the Historic Drummondville Community Improvement Project Area, as outlined in Schedule “E”.
 - (c)
 - 1) Based on the decision of the Treasurer, the property taxes for the property on which the development is located, are in good standing at the time of the application; and
 - 2) Based on the decision of the Director of Planning and Development, the existing and proposed land uses for the development, are in conformity with applicable Official Plans, zoning by-law and other planning requirements at both the local and Regional level; and
 - 3) Based on the decision of the Chief Building Official, all improvements relating to the development are to be made pursuant to a building permit and constructed in accordance with the Ontario Building Code and all applicable zoning requirements and planning approvals; and
 - 4) Based on the decision of the Chief Building Official, outstanding work orders and/or orders or requests to comply from the City have been satisfactorily addressed prior to the City granting the development charge exemption; and, in addition,
 - 5) The Director of Planning and Development, may require the applicant to submit for approval, professional design/ architectural drawings in conformity with any municipality-issued urban design guidelines, as well as traffic impact studies or studies of microclimatic conditions (e.g. sun, shadow, wind) and such requirements must be met prior to the City granting the development charge exemption.

(4) Notwithstanding subsection 7(1), a residential development charge exemption of up to 75% of the amount otherwise payable is calculated in accordance with eligible costs approved under the Brownfields Rehabilitation Grant Program as set out in paragraph 7(4)(a), granted for development of the type defined in paragraph 7(4)(b), located within the area defined in paragraph 7(4)(c), subject to such development meeting the conditions set out in paragraph 7(4)(d) and subject to additional City development charge exemption of up to a further 25%, based on the eligibility requirements set out in paragraph 7(4)(e), where the development also qualified for the 75% exemption.

(a) Eligible costs include only the costs of:

- (i) a Phase II ESA, Remedial Work Plan, and Risk Assessment not covered by the Environmental Study Grant Program or the Brownfields Tax Assistance Program; and/or
- (ii) environmental remediation, including the cost of preparing a Record of Site Condition (RSC), not covered by the Brownfields Tax Assistance Program; and/or
- (iii) placing clean fill and grading not covered by the Brownfields Tax Assistance Program; and/or
- (iv) installing environmental and/or engineering, controls/works, as specified in the Remedial Work Plan and/or Risk Assessment, not covered by the Brownfields Tax Assistance Program; and/or
- (v) monitoring, maintaining and operating environmental and engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment, not covered by the Brownfields Tax Program; and/or
- (vi) environmental insurance premiums not covered by the Brownfields Tax Assistance Program.

(b) The Brownfields development charge exemption potentially applies to any form of residential development which is subject to a development charge, subject to such development application meeting the requirements of this subsection.

- (c) The Brownfields Community Improvement Project Area is the area designated as Urban Area in the City of Niagara Falls Official Plan, as amended from time to time.
- (d)
 - 1) All properties considered eligible for the Brownsfields Development Charge Exemption Program must have an approved Rehabilitation Grant Program Application and Agreement in place and must have a Record of Site Condition (RSC) filed in the Environmental Site Registry for the proposed use with said RSC acknowledged by the Ministry of Environment; and
 - 2) Based on the decision of the Director of Planning and Development, the existing and proposed land uses for the development, are in conformity with applicable Official Plans, zoning by-law and other planning requirements at both the local and Regional level; and
 - 3) Based on the decision of the Chief Building Official, all improvements relating to the development are to be made pursuant to a building permit and constructed in accordance with the Ontario Building Code and all applicable zoning requirements and planning approvals.
 - 4) Based on the decision of the Chief Building Official, outstanding work orders and/or orders or requests to comply from the City have been satisfactorily addressed prior to the City granting the development charge exemption; and, in addition,
 - 5) The Director of Planning and Development, may require the applicant to submit for approval, professional design/architectural drawings in conformity with any municipality-issued urban design guidelines, as well as traffic impact studies or studies of microclimatic conditions (e.g. sun, shadow, wind) and such requirements must be met prior to the City granting the development charge exemption.
- (e) Development which, based on the decision of the Director of Planning and Development, includes three or more of the following features:
 - 1) “intensification of an existing use,” meaning redevelopment or building addition so as to add floor area and/or a residential unit or units.
 - 2) “Creation of mixed uses,” meaning redevelopment, addition or conversion so as to add a new compatible use or uses to a building or

property. “Creation of mixed uses” also means new development that proposes a mixed use building or a mix of uses on the site.

3) “Contribution towards the creation of a walkable neighbourhood character,” meaning development, redevelopment, addition or conversion within a neighbourhood context that features one or more of the following:

- safe and clearly demarcated pedestrian access to and within the development site;
- building orientation and pedestrian access oriented toward the street;
- site and building access directly from the street without requiring passage across a driveway or parking area;
- street-oriented building facade that features fenestration and entranceway to create a sense of permeability and movement between the street and the building interior;
- contribution to the quality of the public space on the street by the provision of space for public assembly, street furniture, artworks and/or landscaping.

(4) “Creation of a range of housing opportunities and choices,” meaning development, redevelopment, addition or conversion that adds multiple-unit housing types to the housing stock.

(5) “Reduced setback from roadways,” meaning development, redevelopment or conversion that places the building facade at the front lot line or closer to the street than the mid-point between the street line and the existing building. Where there is an existing building line along the block-face that is set back from the street line, “reduced front setbacks from roadways”: means placing the building facade closer to the street line than the mid-point between the street line and the established building line.

8. (1) Notwithstanding subsection 7(1), and subject to subsection 8(2) and (3), no development charges shall be collected in respect of the creation of:

- (a) one or two additional dwelling units in an existing single detached dwelling;
- (b) an additional dwelling unit in any other existing residential building; or
- (c) an enlargement of an existing dwelling unit.

- (2) Notwithstanding subparagraph 8(1)(a), development charges shall be calculated and collected in accordance with subsection 7(1) where the total gross floor area of the additional one or two units exceeds the total gross floor area of the existing dwelling unit.
- (3) Notwithstanding subparagraph 8(1)(b), development charges shall be calculated and collected in accordance with subsection 7(1) where the additional unit has a gross floor area greater than,
 - (a) in the case of a semi-detached or townhouse dwelling, the gross floor area of the dwelling unit already in the building, and,
 - (b) in the case of any other residential building, the gross floor area of the smallest dwelling unit already in the residential building.

PART III
NON-RESIDENTIAL DEVELOPMENT CHARGES

9. In this part:
 - (1) “non-residential use” means those uses designated as “non-residential uses” in Schedule ‘C’ to this by-law;
 - (2) “development”: includes re-development
 - (3) “development charge” means non-residential development charge;
 - (4) “gross floor area” means the total of all floors, above and below grade in a building, measured between the outside surfaces of exterior walls or the centre line of firewalls or party walls. Where there is no exterior wall on any storey or floor, the gross floor area shall be the greatest horizontal area on that storey or floor. There shall be no deduction from the calculation of gross floor area for exits, vertical service spaces, stairs, elevators, shafts and ducts.
10. The urban area charge and non-urban area charge, as set out in section 11, is applicable to these specific areas identified in Schedule ‘B’ of this by-law.
11. (1) Subject to the provisions of this part and this by-law, development charges against land to be developed for non-residential use shall be calculated and collected at the following base rates:

Service	Non-Residential GFA of Sq.ft. Urban Area		Non-Residential Non-Urban
	Within the Core Tourist Area	Outside the Core Tourist Area	
<u>Municipal Wide Charge</u>			
Development-related Studies	\$ 0.19	\$ 0.14	\$ 0.19
Parks and Recreation	\$ 0.11	\$ 0.08	\$ 0.11
Library	\$ 0.01	\$ 0.01	\$ 0.01
Roads and Related	\$ 1.03	\$ 0.75	\$ 1.03
Transit	<u>\$ 0.21</u>	<u>\$ 0.15</u>	<u>\$ 0.21</u>
Sub-Total	\$ 1.55	\$ 1.13	\$ 1.55
<u>Urban Area Charge</u>			
Sidewalks	\$ 0.13	\$ 0.15	N/A
Water	\$ 0.12	\$ 0.22	N/A
Sanitary Sewer	\$ 0.02	\$ 1.45	N/A
Storm Water Management	<u>\$ 0.00</u>	<u>\$ 1.48</u>	<u>N/A</u>
Sub-Total	\$ 0.27	\$ 3.30	N/A
Total	<u>\$ 1.82</u>	<u>\$ 4.43</u>	<u>\$ 1.55</u>

- (2) Notwithstanding subsection 11(1), no development charge is imposed under this By-law respecting;
- (a) parking structures;
 - (b) lands and buildings used for agricultural use; notwithstanding this provision, a development charge shall be imposed in relation to agricultural use unless the owner of the fee simple of the land intends to actually use and occupy the land for such respective agricultural use;
 - (c) that portion of building or structure owned by a church or religious organization which is used exclusively as a place of worship.

- (3) Notwithstanding subsection 11(1), a 75% non-residential development charge exemption shall be granted for development of the type defined in paragraph 11(3)(a), located with the area defined in paragraph 11(3)(b), subject to meeting the conditions set out in paragraph 11(3)(c).
- (a) New non-residential development occurring on vacant lots, including parking lots; and/or conversion of residential space to non-residential space and/or the redevelopment of mixed use buildings that creates additional non-residential space.
 - (b) The Downtown Niagara Falls Community Improvement Project Area as outlined in Schedule 'D' or the Historic Drummondville Community Improvement Project Area, as outlined in Schedule 'E'.
 - (c)
 - 1) Based on the decision of the Treasurer, the property taxes for the property on which the development is located, are in good standing at the time of the application; and
 - 2) Based on the decision of the Director of Planning and Development, the existing and proposed land uses for the development, are in conformity with applicable Official Plans, zoning by-law and other planning requirements at both the local and Regional level; and
 - 3) Based on the decision of the Chief Building Official, all improvements relating to the development are to be made pursuant to building permit application and constructed in accordance with the Ontario Building Code and all applicable zoning requirements and planning approvals; and
 - 4) Based on the decision of the Chief Building Official, outstanding work orders and/or orders or request to comply from the City have been satisfactorily addressed prior to the City granting the development charge exemption; and, in addition,
 - 5) The Director of Planning and Development, may require the applicant to submit for approval, professional design/architectural drawings in conformity with any municipality-issued urban design guidelines, as well as traffic impact studies or studies of microclimatic conditions (e.g. sun, shadow, wind) and such requirements must be met prior to the City granting the development charge exemption.
- (4) Notwithstanding subsection 11(1), a non-residential development charge exemption of up to 75% of the amount otherwise payable is calculated in accordance with

eligible costs approved under the Brownfields Rehabilitation Grant Program as set out in paragraph 11(4)(a), granted for development of the type defined in paragraph 11(4)(b), located within the are defined in paragraph 11(4)(c), subject to such development meeting the conditions set out in paragraph 11(4)(d) and subject to an additional City development charge exemption of up to a further 25%, based on the eligibility requirements set out in paragraph 11(4)(e), where the development also qualified for the 75% exemption.

- (a) Eligible costs include only the costs of:
 - (i) a Phase II ESA, Remedial Work Plan, and Risk Assessment not covered by the Environmental Study Grant Program or the Brownfields Tax Assistance Program; and/or
 - (ii) environmental remediation, including the cost of preparing a Record of Site Condition (RSC), not covered by the Brownfields Tax Assistance Program; and/or
 - (iii) placing clean fill and grading not covered by the Brownfields Tax Assistance Program; and/or
 - (iv) installing environmental and/or engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment, not covered by the Brownfields Tax Assistance Program; and/or
 - (v) monitoring, maintain and operating environmental and engineering controls/works, as specified in the Remedial Work Plan and/or Risk Assessment, not covered by the Brownfields Tax Assistance Program; and/or
 - (vi) environmental insurance premiums not covered by the Brownfields Tax Assistance Program.
- (b) The Brownfields development charge exemption potentially applies to any form of non-residential development which is subject to a development charge, subject to such development application meeting the requirements of this subsection.
- (c) The Brownfields Community Improvement Project Area is the area designated as Urban Area in the City of Niagara Falls Official Plan, as amended from time to time.

- (d)
 - 1) all properties considered eligible for the Brownfields Development Charge Exemption Program must have an approved Rehabilitation Grant Program Application and Agreement in place and must have a Record of Site Condition (RSC) filed in the Environmental Site Registry for the proposed use with said RSC acknowledged by the Ministry of Environment; and
 - 2) Based on the decision of the Director of Planning and Development, the existing and proposed land uses for the development, are in conformity with applicable Official Plans, zoning by-law and other planning requirements at both the local and Regional level; and
 - 3) Based on the decision of the Chief Building Official, all improvements relating to the development are to be made pursuant to a building permit and constructed in accordance with the Ontario Building Code and all applicable zoning requirements and planning approvals; and
 - 4) Based on the decision of the Chief Building Official, outstanding work orders and/or orders or requests to comply from the City have been satisfactorily addressed prior to the City granting the development charge exemption; and, in addition,
 - 5) The Director of Planning and Development, may require the applicant to submit for approval, professional design/architectural drawings in conformity with any municipally-issued urban design guidelines, as well as traffic impact studies or studies of microclimatic conditions (e.g. sun, shadow, wind) and such requirements must be met prior to the City granting the development charge exemption.
- (e) Development which, based on the decision of the Director of Planning and Development, includes three or more of the following features:
 - 1) “intensification of an existing use,” meaning redevelopment or building addition so as to add floor area and/or a residential unit or units.
 - 2) “Creation of mixed uses,” meaning redevelopment, addition or conversion so as to add a new compatible use or uses to a building or property. “Creation of mixed uses” also means new development that proposes a mixed use building or a mix of uses on the site.
 - 3) “Contribution towards the creation of a walkable neighbourhood

character,” meaning development, redevelopment, addition or conversion within a neighbourhood context that features one or more of the following:

- safe and clearly demarcated pedestrian access to and within the development site;
 - building orientation and pedestrian access oriented toward the street;
 - site and building access directly from the street without requiring passage across a driveway or parking area;
 - street-oriented building facade that features fenestration and entranceway to create a sense of permeability and movement between the street and the building interior;
 - contribution to the quality of the public space on the street by the provision of space for public assembly, street furniture, artworks and/or landscaping.
- (4) “Creation of a range of housing opportunities and choices,” meaning development, redevelopment, addition or conversion that adds multiple-unit housing types to the housing stock.
- (5) “Reduced setback from roadways,” meaning development, redevelopment or conversion that places the building facade at the front lot line or closer to the street than the mid-point between the street line and the existing building. Where there is an existing building line along the block-face that is set back from the street line, “reduced front setbacks from roadways”: means placing the building facade closer to the street line than the mid-point between the street line and the established building line.

PART IV ADMINISTRATION

12. (1) Subject to the provisions of this part and this by-law, in the case of a development containing more than one use or category of use, each such use shall bear its applicable development charge in the proportion that the gross floor area of such use or category of use bears to the total gross floor area of the development.
- (2) Where as a result of the redevelopment of land, a building or structure existing on the land was, or is to be demolished, in whole or in part, or converted from one principal use to another principal use on the same land, the development charges otherwise payable with respect to such redevelopment shall be reduced by the following amounts:

- (a) in the case of residential building or the residential portion of a mixed-use building or structure, an amount calculated by multiplying the applicable development charges under section 7 of this by-law by the number of dwelling units, according to type, that have been demolished or converted to another principle use; and
- (b) in case of non-residential building or the non-residential portion of a mixed-use building or structure, an amount calculated by multiplying the applicable non-residential development charges under section 11 of this by-law by the non-residential gross floor area that has been demolished or converted to another principal use;

provided that a building permit has been issued within five (5) years following the date the demolition permit is issued, and provided that such amounts shall not exceed in total the amount of the development charges otherwise payable with respect to the redevelopment.

- 13. (1) Development charges shall be calculated and payable in the following manner:
 - (a) If the development will not be the subject of a servicing agreement or an agreement under section 51 or 53 of the *Planning Act*, then the whole of the development charge imposed hereunder shall be calculated and paid in full on the date a building permit under *Building Code Act, 1992* is issued in respect of the building or structure for the use to which the development charge hereunder applies;
 - (b) If the development will be the subject of a servicing agreement or an agreement under section 51 or 53 of the *Planning Act*, then:
 - (i) that portion of the development charge imposed hereunder with respect to urban services shall be calculated and paid on the date the servicing agreement or agreement under section 51 or 53 of the *Planning Act* is executed; and
 - (ii) that portion of the development charge imposed hereunder with respect to services other than the urban services shall be calculated and paid on the date a building permit under the *Building Code Act, 1992* is issued in respect of the building or structure for the use to which the development charge hereunder applies;

- (c) If a development does not require a building permit pursuant to the provisions of the *Building Code Act, 1992*, then the development charge shall be calculated and paid in full as a condition of the earliest of any of the approvals required for the development mentioned in section 3;
 - (d) If a development requires more than one of the actions mentioned in section 3, and a development charge has been paid in respect of one such action, a further development charge shall be calculated and payable in respect of the subsequent action where the subsequent action has the effect of increasing the need for municipal services as designated in Schedule 'A';
 - (e) Where development charges apply to land in relation to which a building permit pursuant to the provisions of the *Building Code Act, 1992* is required, the building permit shall not be issued until the development charge has been paid in full;
14. Nothing in this by-law prevents Council from requiring, as a condition of approval under section 41, 51 or 53 of the Planning Act, that the owner, at it own expense, install such local services as Council may require, or that the owner pay for local connections to watermains, sanitary sewers and storm drainage facilities installed at the owner's expense.
15. In any instance within this by-law that a particular employee or official of the City is assigned the determination of an issue or matter, the decision of that employee or official shall be the final determination of that issue or matter.
16. All development charges established hereunder shall be adjusted without amendment to this by-law annually on the 1st day of August in each year commencing on the 1st day of August, 2010, in accordance with the Statistics Canada Quarterly, Construction Price Statistics, Catalogue 62-007.
17. (1) Council, by written agreement, may permit an owner to commute the whole or such part of the development charge applicable to the owner's development, as may be specified in the agreement, by the provision, at the owner's sole expense, of services-in-lieu in accordance with the agreement the amount of the development charge otherwise applicable to the development shall be reduced in an amount equal to the reasonable cost of providing the services-in-lieu.
- (2) Any dispute as to the reasonable cost of providing the services-in-lieu or the services mentioned in subsection 17(1) shall be referred to the City's Director of Municipal Works, whose decision on the matter shall be final and binding.

18. A certified copy of this by-law may be registered against such lands in the City as Council by resolution from time to time may direct.
19. This by-law shall be administered by the Chief Building Official, who shall be responsible for the interpretation and calculation of the appropriate charges.
20.
 - (1) The City's Director of Finance shall create a reserve fund separate from the other reserve funds of the municipality, shall deposit the development charges paid under this by-law into the appropriate account of the reserve fund created by subsection 20(2), and shall pay from the appropriate account any amounts necessary to defray the net capital cost of the services.
 - (2) The Director of Finance shall divide the reserve fund created hereunder into separate sub-accounts to which development charge payments and interest earned thereon shall be credited in accordance with the amounts shown in sections 7 and 11.
 - (3) The amounts contained in the reserve fund established under subsection 20(1) shall be invested and any income received from such investment shall be credited to the accounts in the said reserve fund in the proportions determined by the balances in the accounts referenced in subsection 20(2), as of December 31st of the previous year.
21. The Director of Finance shall in each year on or before April 30th furnish to Council a statement in respect of the reserve fund accounts for the prior fiscal year established hereunder containing the information required under the regulation.
22.
 - (1) If this by-law is amended or repealed by Council or the Ontario Municipal Board, the Director of Finance shall determine, within 30 days of the amendment or repeal, whether any owner has overpaid in respect of the development charge payable hereunder immediately prior to the repeal or amendment of this by-law and if such an overpayment has been made the Director of Finance shall calculate the amount of such overpayment.
 - (2) Any overpayment determined under subsection 22(1) shall be paid to the person who made the payment at his or her last known address within 30 days of the date of the repeal or amendment of this by-law.
 - (3) If the owner cannot be found or his or her last address is unknown then the repayment obligation under subsection 22(2) is at an end.
 - (4) The refund payable under subsection 22(2), shall be paid, with interest calculated from the date upon which the overpayment was collected to the date on which the refund is made. Such interest shall be paid at the Bank of Canada rate in effect from time to time from the date of enhancement of this by-law as adjusted in subsection

22(5).

- (5) The Bank of Canada rate in effect on the date of enactment of this by-law shall be adjusted on the first business day of January, 2010 to the rate established by the Bank of Canada on that day and shall be adjusted four times each year thereafter on the first business day of October, January, April and July to the rate established by the Bank of Canada on the day of the adjustment.
23. This by-law shall come into force on July 20, 2009.
24. City of Niagara Falls By-law No. 2004-138, as amended, is repealed effective the date of coming into force of this by-law.
25. Schedules 'A', 'B', 'C', 'D', 'E' and 'F' attached to this by-law shall form part of this by-law.
26. Should any provision or any part of any provision of this by-law be held by a competent authority to be invalid, or of no force and effect, it is the intent of Council in enacting this by-law that each and every other provision of this by-law, and every part of every provision authorized by law stand and be applied and enforced in accordance with its terms.
27. This by-law may be cited as the *City of Niagara Falls Development Charges By-law*.
28. That By-laws 2004-138 and 2007-48 are hereby repealed.

Passed this 20th day of July, 2009.

DEAN IORFIDA, CITY CLERK



R.T. (TED) SALCI, MAYOR

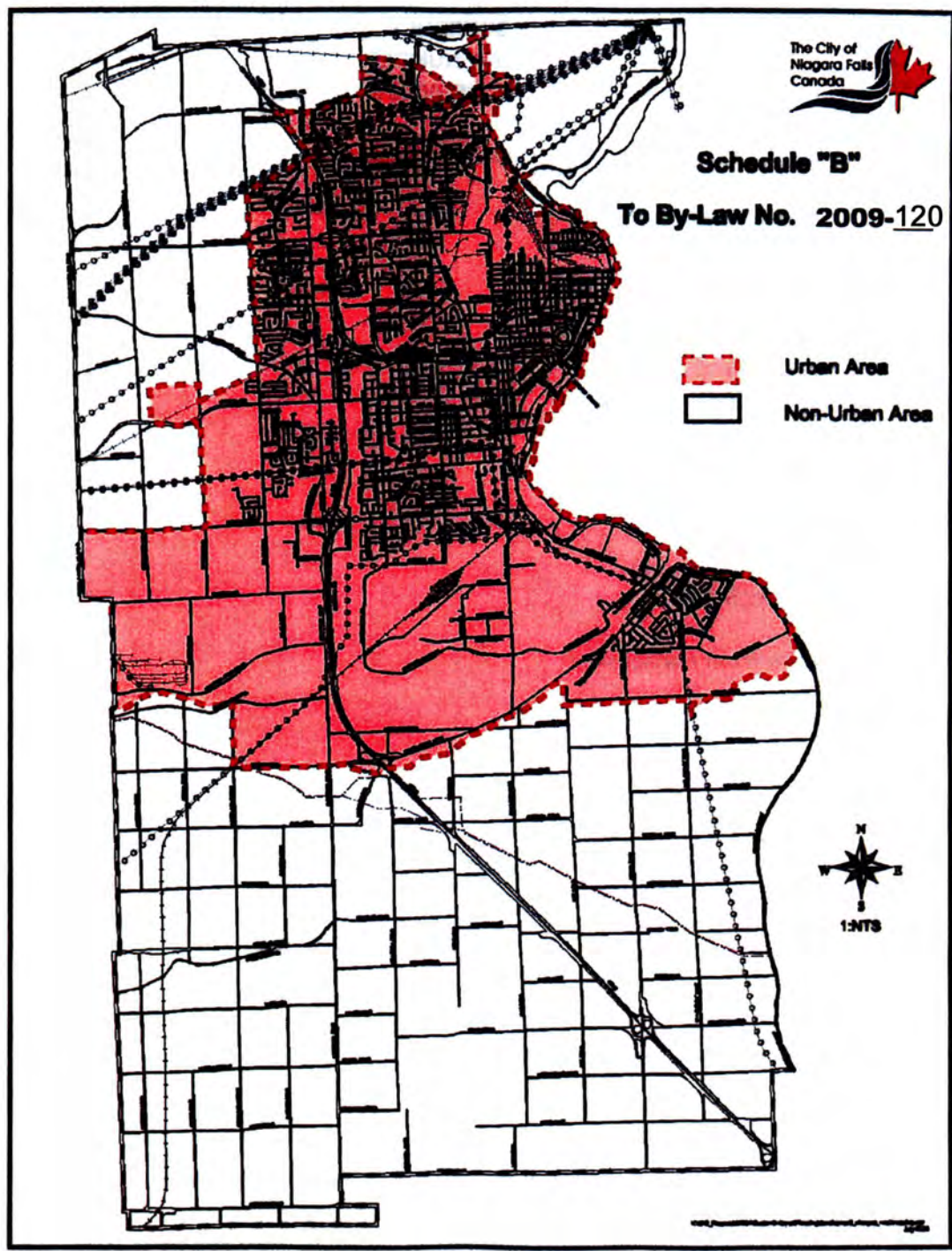
SCHEDULE 'A'
TO BY-LAW NUMBER 2009-120
"SERVICES"

- a) General Government (Development-related Studies)
- b) Roads and Related
- c) Sidewalks
- d) Transit
- e) Parks and Recreation
- f) Library
- g) Water
- h) Sanitary Sewer
- i) Storm Water Management



Schedule "B"
To By-Law No. 2009-120

-  Urban Area
-  Non-Urban Area



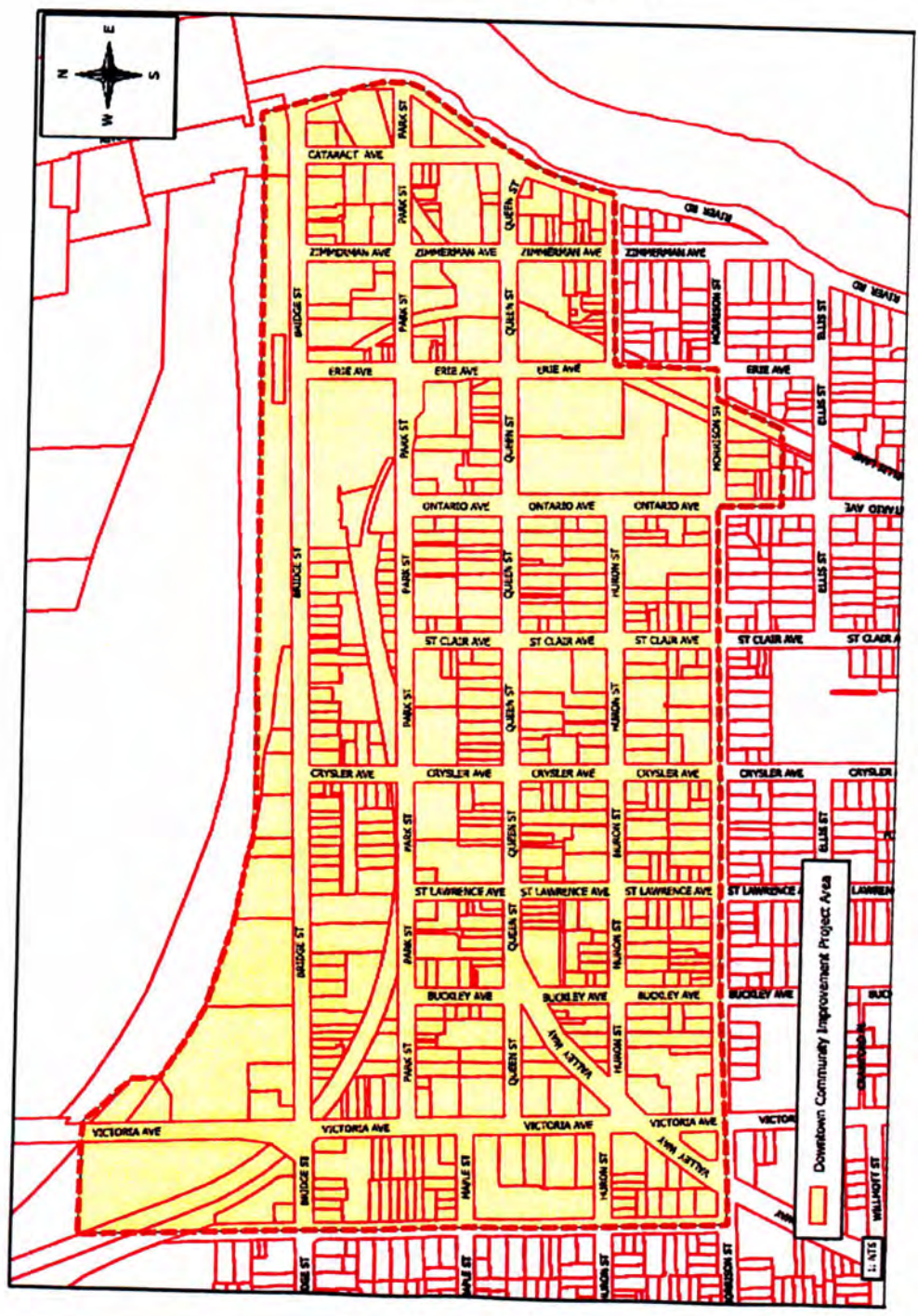
SCHEDULE ‘C’

TO BY-LAW NUMBER 2009-_____

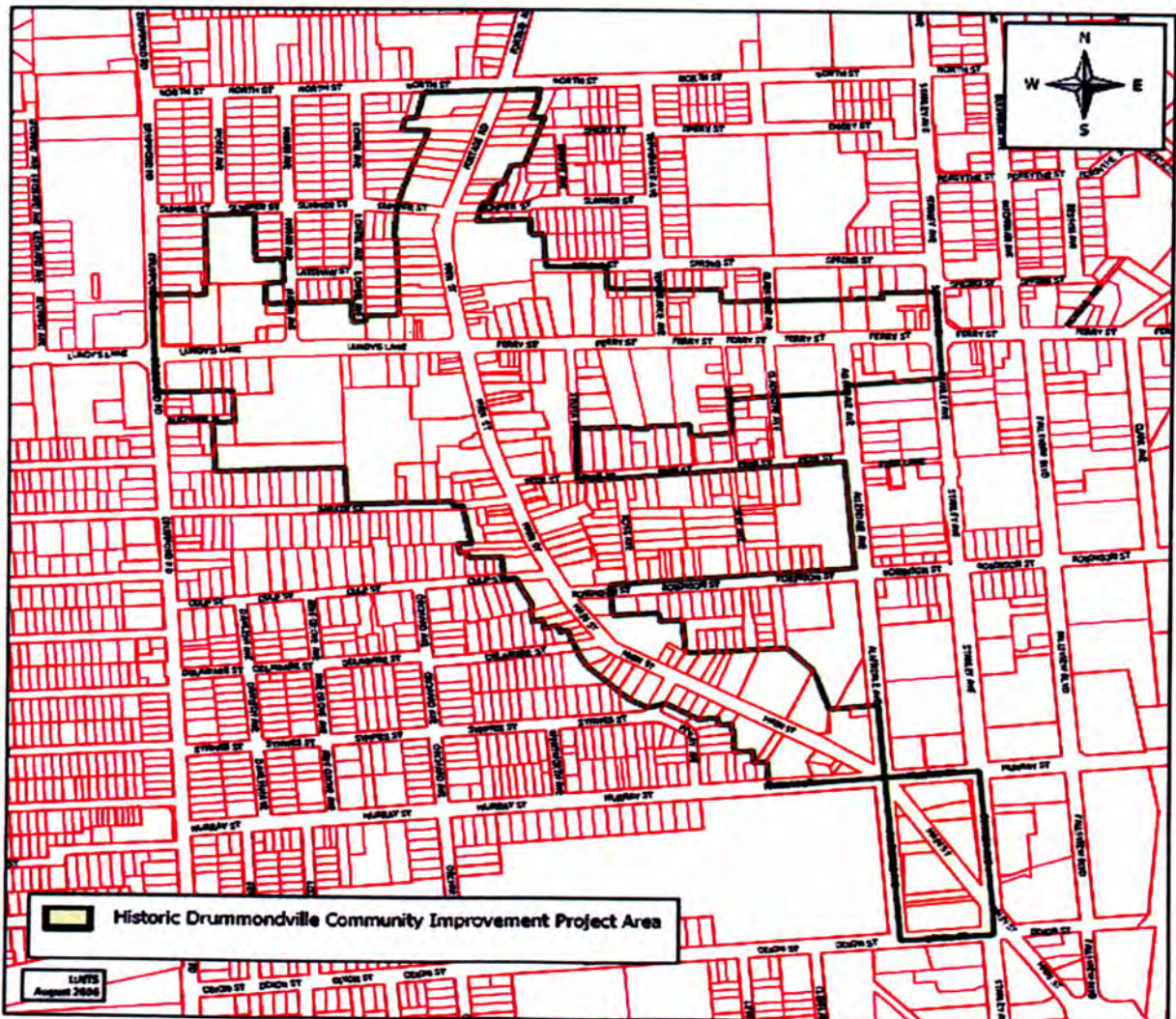
“NON-RESIDENTIAL USES”

1. Assembly Hall, Exhibition Establishment or Convention Centre
2. Art Gallery
3. Auctioneering Establishment
4. Bake Shop
5. Bank or Financial Institution or Office, Currency Exchange Establishment
6. Casino or Gaming Establishment
7. Day Care Establishment or Child Care Facility
8. Do-it yourself Brewery or Winery
9. Drive-in or Drive -through Facility or Establishment
10. Dry Cleaning Establishment or Laundromat
11. Health and Fitness Centre or Establishment
12. Hospital, Health Care Facility, Clinic, Nursing Home or Retirement Home
13. Hotel, Motel, Tourist Home, Hostel or Camping Establishment
14. Office or Office Building
15. Personal Service Shop or Establishment
16. Place of Recreation, Arena, Grandstand or Sport Facility
17. Place of Worship or Religious Institution or Facility
18. Printing Shop
19. Private Club
20. Private School or Institution
21. Restaurant, Café, Tavern, Bar Eating and Drinking Establishment or Licensed Premises
22. Retail Store or Establishment, Showroom or Storage Area
23. Self-service Establishment
24. Service Store or Establishment
25. Sightseeing Tours Establishment or Tourist Information Centre
26. Studio
27. Theatre, Cinema or Place of Entertainment
28. Undertaking Premises, Mausoleum or Funeral Home
29. Vehicle Sales, Display, Rental, Wash, Service, Fuelling or Repair Establishment
30. Veterinary Establishment or Animal Hospital

**SCHEDULE "D" TO BY-LAW NO 2009-120
DOWNTOWN NIAGARA FALLS COMMUNITY IMPROVEMENT
PROJECT AREA**



**SCHEDULE "E" TO BY-LAW NO 2009-120
HISTORIC DRUMMONDVILLE COMMUNITY IMPROVEMENT
PROJECT AREA**





SCHEDULE "F" TO BY-LAW NO 2009-120 CITY OF NIAGARA FALLS CORE TOURIST AREA BOUNDARY

