



City of Richmond

Report to Committee

To: General Purposes Committee
From: Joe Erceg, MCIP
General Manager, Planning and Development

Date: December 5, 2008
File: 08-4105-20-AMANDA
#/2008-Vol 01

Re: Supplemental Report to "The Garden City Lands "Block Application" for Exclusion from the Agricultural Land Reserve – Status Update" Report Presented at the November 17, 2008 General Purposes Committee Meeting

Staff Recommendation

That Council:

- approve a modification to the Agreement of Purchase and Sale to extend the date limited for satisfaction of the Agricultural Land Reserve (ALR) Release Condition from December 31, 2008 to June 30, 2009;
- authorize staff to provide additional information to the Agricultural Land Commission (ALC) on measures the City and the participants in the "Block Application" are prepared to undertake in Richmond to further benefit agriculture in the remainder of the Agricultural Land Reserve (ALR) in support of the "Block Application" submitted in April 2008 to exclude the "Garden City Lands" from the Agricultural Land Reserve (ALR) on behalf of the Musqueam Indian Band (Musqueam), the City of Richmond and the Canada Lands Company (CLC); and
- advise the Agricultural Land Commission (ALC) that the City, subject to detailed review and discussion with the Agricultural Land Commission (ALC), is prepared to negotiate and enter into a Memorandum of Understanding, or equivalent documentation with similar legal standing, with the Agricultural Land Commission (ALC) to commit the City to carry out the proposed initiatives outlined in this report as part of the "Block Application".

Joe Erceg
Joe Erceg, MCIP
General Manager, Planning and Development

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|-------------------------------------|---|-----------------------------|--|
| ROUTED TO: | CONCURRENCE | | CONCURRENCE OF GENERAL MANAGER |
| Law | Y <input checked="" type="checkbox"/> | N <input type="checkbox"/> | <i>Joe Erceg</i> |
| REVIEWED BY TAG | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> | REVIEWED BY CAO |
| | <i>ME</i> | | <i>CAO</i> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> |

Staff Report

Origin

This is a supplemental report to be reviewed in conjunction with the staff report dated November 12, 2008 (**Attachment 1**) to:

1. bring Council up to date on new information received since the General Purposes Committee of November 17, 2008; and
2. highlight important information and provide clarification of issues, strategies and rationale pertinent to the Garden City Lands (the Lands) in order to update Council and recently elected Council members, Ken Johnson and Greg Halsey-Brandt, as directed by the General Purposes Committee on November 17, 2008.

The staff recommendation remains substantially unchanged from the staff report to Council dated November 12, 2008, from the General Manager, Planning and Development, titled "The Garden City Lands "Block Application" for Exclusion from the Agricultural Land Reserve – Status Update". Recommendation 2 is slightly revised to improve clarity and to correct a date.

Background

Council passed a resolution at the General Purposes Committee meeting on November 17, 2008 that:

"the report (dated November 12, 2008, from the General Manager, Planning and Development) titled the Garden City Lands "Block Application" for exclusion from the Agricultural Land Reserve – Status Update (Attachment 1) be referred to a General Purposes Committee meeting to be held before the holiday break for consideration by the new Council."

and instructed staff to:

- provide Councillors Elect Ken Johnson and Greg Halsey-Brandt with a copy of this report and other relevant reports;
- set up a meeting with two Members of Parliament for Richmond and members of City Council; and
- investigate whether the M.P.s were aware of any federal legislative process that may be used to return the Garden City Lands to the Crown as outlined in their letter of November 17, 2008 (**Attachment 2**).

As partners to the Memorandum of Understanding (MOU) and the Purchase and Sale Agreement (PSA), both the Musqueam and the Canada Lands Company (CLC) are directly involved in this project. They have been closely monitoring all developments, including City reports and activities, media reports, correspondence and public opinion. The Musqueam and the CLC have expressed considerable concerns during the process regarding what they have perceived as misinformation in the public realm. As a result, on their own volition, the Musqueam and the CLC have submitted letters and legal opinions to the City from time to time to ensure their position and interests are correctly represented in the public record. The most recent submission from the Musqueam is attached (**Attachment 6**).

Analysis

Meeting with the Members of Parliament

Council instructed staff to set up a meeting with John Cummins, M.P., and Alice Wong, M.P., and members of City Council. A meeting has been arranged for Saturday, December 6, 2008 at City Hall. Since the report cut off time precedes this meeting, a verbal update of the meeting will be provided at the General Purposes Committee meeting on December 8, 2008 to update Council members who are unable to attend the meeting with the M.P.s.

Purchasing the Garden City Lands Through the Federal Government

- The Mayor submitted a written request on November 26, 2008 (**Attachment 3**) to the Honourable Vic Toews, President of the Treasury Board asking for clarification given the comments from the M.P.s which conflicted with past advice from the federal government with respect to the disposition process for the Garden City Lands.
- A letter of response dated December 1, 2008 was received from Minister Toews, and co-signed by the Honourable Rob Merrifield, Minister of State (Transport) responsible for the CLC, on December 4, 2008 (**Attachment 4a**). This, together with a previous letter from the Treasury Board dated December 4, 2007 (**Attachment 4b**) provided clarification on the Treasury Board's process and status of the Lands:
 - The December 4, 2007 (**Attachment 4a**) letter confirmed that the sale of the Lands to the CLC was concluded in accordance with the requirements set out in the Disposal Directive. Title to these Lands was transferred to the CLC in fee simple and is no longer property of the Federal Government.
 - The December 1, 2008 letter (**Attachment 4b**) indicated that there are no Federal Departments engaged in any process nor have any expressed any interest in acquiring the Garden City Lands to either the Treasury Board or the CLC.
- Legal advice from the Musqueam (**Attachment 6**), the CLC (**Attachment 7**), and the City's legal advice agreed that any transfer of the Lands in future will require the consent of the Musqueam because they hold a 50% undivided interest in the Lands that the CLC is holding in trust for the Musqueam. CLC agrees with this position taken by the Musqueam's legal advisors. Accordingly, a Federal Department in acquiring the site would have to be agreeable to share equal undivided ownership with Musqueam, if Musqueam were to give their consent.

Preserving Flexibility Given Musqueam's Undivided Interest in the Ownership

- Staff recognize that removal of the Garden City Lands from the ALR is not supported by all members of Council and has become an important public issue. Some members of Council would prefer the City take ownership of the full Garden City Lands site by acquiring the Musqueam and the CLC's share, either before the ALC makes its decision on the application or after the decision on the application, regardless of the outcome.
- The CLC and the Musqueam negotiated a Joint Venture Agreement (JVA) between themselves separate from the MOU and the PSA. The City is not party to the JVA.
- Staff have on more than one occasion analyzed these options and held exploratory discussions with the Musqueam and the CLC. The CLC and the Musqueam have confirmed as owners of the Lands that they are not willing to sell, other than as stipulated in the MOU

and the PSA (**Attachment 5**) for the sale of the Lands to the City. They have also verified that their JVA remains in effect in the event that the MOU with the City should fail to be fully executed.

- The CLC and the Musqueam have separately confirmed that the JVA protects the Musqueam's undivided interest in the site (**Attachments 6 and 7**). Legal opinion obtained by the City confirms that the Musqueam has a 50% undivided interest in the Lands. This means there can be no further transfer of the Lands by the CLC without the Musqueam consent even if the MOU and the PSA expire.
- The best chance for the City to obtain any of the Garden City Lands is to secure approximately 50% of the Lands through the MOU and the PSA. The removal of the Lands from the ALR is a condition of the PSA. Staff believe that should the City intend to continue to pursue efforts to acquire the entire site, the City's position would be significantly improved if the ALR application is approved and the MOU and the PSA are satisfactorily completed. Under this scenario, the City would only have to try to acquire one half of the site, as opposed to the whole site. Strategically and in terms of leverage for future negotiations, it is significantly better to secure ownership of one half of the site before taking any alternative action to increase the City's ownership stake. The alternative would be to relinquish a mutually agreed to vehicle (the MOU and the PSA), by the owners/vendor (the CLC and the Musqueam) and the purchaser (the City), through which the City can acquire approximately half of the site before pursuing ownership of the whole site. This would put the City in a much weaker position for any future negotiation and the costs would likely be prohibitively high.
- Should Council's goal be to keep as much as possible of the Garden City Lands in the ALR, this may also more likely be achieved if the application is successful. The City could gain title to approximately half of the Lands if the ALC approves the "Block Application". Once it has secured ownership, Council could choose to place Richmond's share back into the Reserve and also endeavour to acquire some or all of the Musqueam and the CLC's share to achieve this goal should any portion of their land become available in future.
- External counsel advised the City that:
 - a. "The city has no inherent right to ownership of the GCL and there is no requirement for return of the Lands to the Federal Government." Therefore, external counsel believes "that the City is unlikely to be successful in establishing ownership of the GCL, in the absence of the MOU and PSA"; and
 - b. that should the City of Richmond terminate the MOU and the PSA and negotiate purchase of the Garden City Lands from the CLC and the Musqueam Indian Band (MIB), the City of Richmond would have to negotiate with the CLC and the MIB well after the existing spirit of co-operation and goodwill has been severed. Counsel believes that the CLC's and/or the MIB's expectations might increase and these factors would reduce the likelihood of a new agreement. The MIB and the CLC are also under no obligation to achieve a new agreement with the City.

Trade and Exhibition Facility and Its Impact on Achieving a Large "Contiguous" Open Space

- Tourism Richmond has confirmed in a letter dated November 27, 2008 that they are abandoning the initiative to develop a Trade and Exhibition Centre (TEC) for Richmond (**Attachment 8**).

- The elimination of the TEC from this site will trigger Section 10 "TEC Lands" of the PSA, which provides specific stipulations with respect to alternative use and development of the portion of the site earmarked for the TEC should the project not proceed.
- In essence, Section 10 stipulates that 50% of the Lands would go to the City of Richmond for public use including a TEC, which could be comprised of up to 15 % of the total site area to be located within the City's portion of the Lands. If the TEC does not proceed, the Musqueam, the City and the CLC could develop this portion of the Lands jointly; or if an agreement cannot be reached, the Musqueam and the CLC may elect to purchase 50% of the TEC site and the City would retain the other 50% of the TEC site. The City will enter into this negotiation with the CLC and the Musqueam should the "Block Application" be approved.
- The CLC submitted a letter dated November 17, 2008 (**Attachment 9**) to clarify the distribution of open space on the City's portion of the Lands with respect to the term "scattered" in the MOU. This letter noted that:
"CLC/Musqueam hereby advise that a minimum area of 40 acres (which is comparable in size to the open space available in Minoru Park) and inclusive of the 15% of the site earmarked for the TEC, will be arranged in a consolidated area with appropriate dimensions for its program purposes to the sole satisfaction of the City of Richmond as the approving authority".
- As a result of the elimination of the TEC from the Lands, it is likely that the amount of useable contiguous green space can be increased.

Conclusion

The Garden City Lands are crucial for the City to fulfill a wide range of community needs for the citizens of Richmond, including enhancement to agriculture and public amenities to support a highly livable City Centre and a vibrant community; as well as for the Musqueam to meet some of their social and economic need to build community capacity.

Staff believe that the strategies and initiatives outlined in the November 12, 2008 staff report (**Attachment 1**) to benefit agriculture in Richmond to enhance the "Block Application" remain sound in view of the information outlined in this supplemental report. As a consequence, it is recommended that Council adopt the recommendations as outlined in this report, which are identical to the recommendations in the November 12, 2008 report.

Staff believe that it is better to secure ownership of half of the site before taking action to increase the City's ownership stake, than to relinquish the opportunity for the City of Richmond to own half of the site before pursuing ownership of the whole site. The fulfillment of the MOU and the PSA, including the approval of the "Block Application" by the ALC is necessary in order for the City of Richmond to obtain ownership of approximately 50% of the property and regulatory control over the entire site. Once the City has secured ownership of the maximum possible amount of the site, Council may seek to return all, or a portion of its lands to the ALR.



Cecilia Achiam, MCIP, BCSLA
Senior Program Manager, Policy Development, CPMG

- Attachment 1 Staff report dated November 12, 2008 titled "The Garden City Lands "Block Application" for Exclusion from the Agricultural Land Reserve – Status Update"
- Attachment 2 Letter from Alice Wong and John Cummins, Members of Parliament dated November 17, 2008
- Attachment 3 Letter from Mayor Brodie dated November 26, 2008
- Attachment 4a Letter from the Honourable Vic Toews dated December 1, 2008
- Attachment 4b Letter from the Treasury Board dated December 4, 2007
- Attachment 5 Letter from the CLC dated November 6, 2008
- Attachment 6 Letter from the Musqueam (and attachments) dated November 28, 2008
- Attachment 7 Letter from the CLC (and attachments) dated December 3, 2008
- Attachment 8 Letter from Tourism Richmond dated November 27, 2008
- Attachment 9 Letter from the CLC dated November 17, 2008



City of Richmond

Report to Committee

To General Purposes - NOV 17, 2008
To: General Purposes Committee **Date:** November 12, 2008
From: Joe Erceg, MCIP **File:** AG 08-416748
 General Manager, Planning and Development
Re: **The Garden City Lands "Block Application" for Exclusion from the Agricultural Land Reserve - Status Update**

Staff Recommendation

That Council:

1. approve a modification to the Agreement of Purchase and Sale to extend the date limited for satisfaction of the Agricultural Land Reserve (ALR) Release Condition from December 31, 2008 to June 30, 2009;
2. authorize staff to provide additional information to the Agricultural Land Commission (ALC) on measures the City is prepared to undertake in Richmond to further benefit agriculture in the remainder of the Agricultural Land Reserve (ALR) in support of the "Block Application" submitted in April 2007 to exclude the "Garden City Lands" from the Agricultural Land Reserve (ALR) on behalf of the Musqueam Indian Band (Musqueam), the City of Richmond and the Canada Lands Company (CLC); and
3. advise the Agricultural Land Commission (ALC) that the City, subject to detailed review and discussion with the Agricultural Land Commission (ALC), is prepared to negotiate and enter into a Memorandum of Understanding, or equivalent documentation with similar legal standing, with the Agricultural Land Commission (ALC) to commit the City to carry out the proposed initiatives outlined in this report as part of the "Block Application".

Joe Erceg
 Joe Erceg, MCIP
 General Manager, Planning and Development

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| ROUTED TO: | CONCURRENCE | | CONCURRENCE OF GENERAL MANAGER | | |
| Law..... | Y <input checked="" type="checkbox"/> N <input type="checkbox"/> | | <i>Joe Erceg</i> | | |
| REVIEWED BY TAG | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> | REVIEWED BY CAO | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |

Staff Report

Origin

Subsequent to the City "Block Application" submission to exclude the Garden City Lands from the Agricultural Land Reserve (ALR) in April 2008, Mayor Brodie made a presentation on behalf of the City, the Musqueam and the Canada Lands Company (CLC) to the Agricultural Land Commission (ALC) on August 14, 2008.

At the meeting, the Commission members raised issues specific to the Garden City Lands application and other issues relating more generally to Richmond ALR lands that staff believe should be more thoroughly addressed. Particularly, there was a strong interest from the Commission to know what the City is currently doing, and is prepared to do, to further improve and enhance the viability of remaining ALR in Richmond.

Based on the ALC meeting, and subsequent staff to staff discussions initiated by City staff, staff are of the opinion that if the City does not supplement the application to address some of the areas of concern, there will be very little chance of approval. Our MOU partners (CLC and the Musqueam) share this observation and have initiated an additional contribution of approximately \$5,250,000, over and above the \$10 M Agricultural Endowment Fund they have already committed to, in order to enhance and advance programs and initiatives to provide further benefits to agriculture. The City should cooperate with this effort to honour the spirit and intent of the MOU. Moreover, based on the nature of the discussion at the Commission meeting and subsequent staff discussions, City staff believe that if the City of Richmond is prepared to provide additional commitments in several key areas to further protect and enhance agriculture, then the City's chance for success on the "Block Application" will be significantly improved.

This report identifies a variety of initiatives and improvements that can be implemented within Richmond's ALR and recommends that the ALC be advised that the City of Richmond is willing to undertake these measures in support of the "Block Application".

Background

The City has contemplated the acquisition of the Garden City Lands for a considerable period of time to provide public amenities and has made multiple attempts to acquire the site from the Federal Government without success. The Federal Government is no longer the owner of the site. The CLC and the Musqueam each have an undivided 50% interest in the Lands. The CLC holds the 50% interest of the Musqueam in trust for the Musqueam. The Treasury Board of Canada Secretariat sold and transferred title of the Garden City Lands to the Canada Lands Company (CLC) after the CLC and the Musqueam negotiated a Joint Venture Agreement (JVA) between themselves for co-development of their portion of the site to resolve the injunction granted by the courts to the Musqueam. The City is not party to the JVA.

The Musqueam, the City of Richmond and the CLC signed a Memorandum of Understanding (MOU) and Purchase & Sale Agreement (PSA) that provide the City of Richmond with the opportunity to obtain ownership of approximately half the site while they are in place. Without them, the City has no ownership right and its regulatory jurisdiction is in jeopardy. The PSA provides that:

- The City is entitled to purchase approximately 50% of the 136-acre site for \$4.77 M for public amenities subject to certain conditions, including the removal of the land from the Agricultural Land Reserve. This purchase price represents a per acre cost below \$70,000 per acre for a site in a City Centre location. Without the PSA, the City of Richmond has no legal claim to any of the Garden City Lands whereas the CLC/Musqueam have the option to pursue other means by which to achieve their goals concerning the Lands, without having to provide any opportunity for the City 's involvement or benefit;
- The City has regulatory control over the land use and will be able to levy property tax. Should the Musqueam gain ownership of the lands through means other than the MOU, it may be challenging to achieve municipal regulations and processes.

There has been much speculation, which continues to linger, about whether the Garden City Lands are available for sale. Since the purchase and sale of land cannot occur without a willing seller(s) and buyer(s) at the table, the City approached the owner of the Garden City Lands earlier this month on the possibility of a sale of all or part of the CLC/Musqueam interest in the Garden City Lands to the City of Richmond. As noted in (**Attachment 1**), the CLC and the Musqueam have formally responded that the subject site is not for sale.

Analysis

This report is being presented to Council because at the ALC meeting on August 14, 2008, issues were raised that staff believe should be addressed. In addition, staff received a letter from the ALC dated November 12, 2008 providing all submissions received since the August 14, 2008 meeting and asking if the City has any additional comments to submit in relation to the "Block Application". The submissions have been placed in a binder which is circulated with this report. The City of Richmond has not commented on any submissions to date and has instead provided the ALC with copies. Therefore, it is not suggested that comment be made on the latest package of submissions. However, staff see this as an opportunity to advise the Commission about initiatives and programs to enhance agriculture in Richmond that the City is willing to undertake which were not specified in the "Block Application". The commitments contained within the staff recommendation are put forward on the understanding that upon more detail review that there will be no legal impediments.

The following is an outline of the programs and initiative that City staff believe should be undertaken in support of the "Block Application":

1. Improved Bylaw Enforcement, Policy and Program

1.1. ALR Regulation

The enforcement of the ALC Act is currently the sole responsibility of the ALC. The ALC has long expressed a desire for local communities to assist in the protection of the ALR by undertaking enforcement of the Act. This is a logical step, as municipalities are closest to the ALR and the Commission has limited enforcement staff.

City staff's understanding is that the ALC is looking for a partnering municipality to take over Bylaw enforcement at least to the level of service currently being provided by the ALC. Both Commission and City staff are reviewing detailed cost implications and legislative requirements for delegation of powers to a municipality.

The ALC only has two staff to look after enforcement for the entire province so it is looking for opportunities to enhance enforcement in the ALR. If Council supports the transfer of enforcement from the ALC to Richmond, we will be the first community to partner with the ALC in piloting this new approach. A preliminary review indicated that with the addition of approximately \$190,000 to the annual budget of Community Bylaws to support one dedicated Full Time Equivalent (FTE) position, equipment, expert resources, legal fees and related educational material, the City could provide a significantly enhanced level of enforcement and satisfy the expectations of the ALC.

Over time, as the community becomes aware of increased enforcement of the Act, the FTE position can also respond to other bylaw enforcement needs in the City and support agricultural initiatives. For example, this dedicated FTE position could proactively take on liaison responsibilities with the Commission staff and collaborate with the ALC to improve agricultural policies and programs that further strengthen the viability of agriculture in Richmond in consultation with the ALC. If the "Block Application" is approved in principle by the Commission, the Law and Community Safety Department will work in consultation with the ALC staff to better define the delegation details, programs and liaison processes to provide further clarity.

Based on discussion to date, it is anticipated that a portion of the estimated \$190,000 annual cost could be recovered in fines collected as a result of infractions. In addition, the Musqueam and the CLC have agreed in principle to provide an additional \$250,000 new cash contribution, upon removal of the land from the ALR, to share the costs with the City during the initial implementation years of this program. This contribution is separate from, and in addition to, the Agricultural Endowment Fund and any other new contributions towards agricultural improvements.

1.2. Coordinate Placement of Clean Fill for ALR Rehabilitation

The City can establish a program to direct clean fill from construction and development activities (and other activities) to agricultural sites that need fill. This can be accomplished through a pro-active, coordinated approval with the ALC by pre-approving sites to take on clean fill within the ALR. In addition, the City can make available clean fill from City capital works for agricultural uses in Richmond. Discussion with the ALC staff has indicated that such a program would likely significantly reduce unlawful soil/material dumping in the ALR.

Community Bylaws has confirmed that Richmond has a lack of fill sites to meet the demand from the community. A coordinated approach to manage clean fill will definitely be beneficial to address multiple concerns from enforcement issues to the need for clean fill for site rehabilitation.

An integrated component of this program is education about fill. The City could create educational brochures on the types of acceptable fills and situations where fill is required, as well as establishing a list of resources and contact, to be utilized when issues and questions regarding fill arise. This initiative can be achieved within existing staff and financial resources.

1.3. Soil Production by the City of Richmond

It is feasible for the City to help facilitate soil rehabilitation efforts by local farmers by implementing a new initiative. There is an opportunity to ramp up the soil production operation at the City Public Works facility to produce soil for local farming community at cost. The extra production costs can be recovered by the sale of the additional soil produced. The City currently produces soil for its own operation from clay, sand and peat feedstock at a City owned and operated facility with the feedstock largely coming from City operations. This facility is not being operated at full capacity and is in operation only part time. At full time operation, the City facility has the potential capability to produce up to 117,000 m³ of soil annually and provide the extra soil produced to agricultural uses on a cost recovery basis.

A preliminary analysis indicates that the City's soil production cost is less than half the cost of market rates. Depending on the availability of feedstock, the City could produce between 30,000 m³ to 100,000 m³ of soil for purchase, at less than market rates, to rehabilitate land for agricultural purposes.

2. **Improvements to Drainage and Irrigation in East Richmond**

The East Richmond Drainage and Irrigation Study was completed and adopted by Council in 2006. The Study concluded that \$11.1M (2006 Dollars – not including land) of drainage and irrigation upgrades were required to help support agricultural activities. The value of East Richmond drainage and irrigation improvement works completed to date is \$6.6M (including the 2008 tendered project). A further \$5.6M is proposed for expenditure over the next 5 years in the 2009-2013 Capital Program.

The viability of this project is dependent on the availability of funding within the City's Capital Budget process as well as the availability of funding from senior levels of government. Recent trends have indicated that grant funding from senior levels of government is falling and some programs may be eliminated. Given the recent significant global economic down turn, available of future funding through these sources are even less assured. On the other hand, timely improvement to drainage and irrigation in East Richmond is essential for the long term viability of agriculture in Richmond. To ensure that this important project is carried out in a more predictable manner, City staff have secured an additional commitment from the CLC and the Musqueam to increase their agricultural amenity contribution as part of the rezoning condition if the application to remove the Garden City Lands from the ALR is successful.

It is estimated that the additional commitment from the CLC and the Musqueam will generate at least an additional \$5M (over and beyond the existing Agricultural Endowment – estimated at \$10-\$12M) by raising the amenity contribution from \$2/sq. ft. to \$3/sq. ft. of buildable floor area. It is proposed that approximately \$4.5M of the total will be allocated by the City for advancing projects identified in the 2006 East Richmond Drainage and Irrigation Study to ensure that work continues on this important initiative to benefit agriculture in Richmond, while the \$500,000 would be used to fund initiatives to reduce the effects of small lot parcelization on the ALR described in the next section.

3. Minimize Effects of Small Lots on Agriculture

Much of the Richmond ALR exists as small lots, some as small as two acres or less in size. The ALC has in the past suggested re-plotting schemes within the ALR may be a viable vehicle to increase parcel sizes to over 2 acres in order to eliminate this jurisdictional ambiguity and to create larger land parcels that are more viable for stand-alone agriculture operations under a single ownership. The ALC feels that any movement to increase the minimum lot size in the ALR would send a strong signal to discourage speculation in small ALR lots.

Preliminary review by City staff has indicated that re-plotting schemes are cumbersome, impractical (due to the level of consent required amongst landowners) and expensive given the fragmented ownership, the legal obligation for compensation of an equivalent value as part of a re-plot, and the legal obligation to provide road frontage to the remaining land parcels with legal title along the same road. The ALC staff are in agreement with the City staff assessment.

With a view to minimize effects of small lots on Richmond agriculture in the long term, City staff have had discussions with the ALC staff to investigate the possibility of a joint planning exercise, on a quarter section by quarter section scale, within the ALR, which could produce many of the benefits of re-plotting schemes while avoiding their shortcomings. The ALC is willing to commit staff resources and time to work with the City on a pilot study to examine areas with concentrations of small ALR lots in Richmond.

Based on preliminary discussions it is recommended that a pilot project be undertaken within the six quarter sections bounded by Westminster Highway, No. 5 Road, Francis Road and No. 4 Road for a feasibility study to explore ways to:

- encourage lot consolidation of adjoining small properties with common ownership;
- explore long term leases of un-constructed roads to adjacent farmers to increase productive land base;
- assess feasibility of road closures where required road frontage can be maintained;
- investigate the probability and legal implications of registering a covenant on title with the owners' consent to prevent small lots currently under single ownerships from being sold individually; and
- establish formal ALC consultation process with respect to new road construction within the ALR.

It is estimated that each quarter section study will require a City commitment of approximately a 0.5 FTE for a period of one year. Salary and other costs could total approximately \$80,000 per quarter section. Few opportunities for cost recovery potential have been identified; however, this remains a worthwhile initiative to examine further with the ALC. Approximately \$500,000 will be required from the approximately \$5M additional contribution from the CLC and the Musqueam described earlier in this report to complete a review of all six quarter sections.

4. Discourage Uses Other than Bona Fide Agricultural Uses Within the ALR

The City has had preliminary discussions with the ALC to implement changes to various bylaws and policy areas to further strengthen and protect agriculture in Richmond. The main purpose for the suite of bylaw and policy improvements described below is to enhance agricultural practices and discourage uses that may displace or negatively impact agricultural uses.

4.1. Control Lands Speculation in the ALR for Estate Homes by Tightening the Existing Zoning Bylaw

Staff have conducted a preliminary review of the issue of limiting the size of homes within the ALR to discourage "estate homes" that do not contribute to agricultural activity. For example, staff are in the preliminary stage of exploring limiting the size of houses based on property size, as described in the following table. The proposed graduated scale of range of lot size to maximum house size is believed to be conceptually acceptable to the ALC.

| Lot Size (acres) | Proposed Maximum House Size |
|------------------|-------------------------------|
| 5-10 | 560 m ² (6,027 sf) |
| 10.1 -20 | 570 m ² (7,212 sf) |
| > 20 | 840 m ² (9,042 sf) |

4.2. Tighter Control of Uses Associated with Houses in the ALR

Preliminary review suggests that agriculture would benefit by tighter control of uses typically associated with houses in the ALR. Ancillary uses such as tennis courts, accessory buildings, auto courts, septic fields (where possible), etc., could be required to locate within the front 50 m of ALR lots. A more thorough review is required and greater controls can be introduced via the Zoning Bylaw.

4.3. Formalize the Consultation Process with the ALC for Road Construction within the ALR

The City has an informal referral arrangement with the ALC to review road construction requests within the ALR. It is believed that by setting up a formal referral process, the City can provide the ALC assurance that it will be involved as part of any request for road construction in the ALR and its jurisdiction can be more clearly communicated to

the public. The City can undertake the production of brochure material, in consultation with the ALC, to reflect the ALC's authority in this area.

4.4. Work With the Commission to Explore Conservancy of Land for Agricultural Purposes

Staff will continue working with the ALC and interest groups to explore other avenues for conservancy of land for agricultural purposes including land trust and covenants on sites to limit use on agricultural land. This will be an on-going project as opportunities arise.

5. **Urban Agriculture**

The City has a proven track record as an active supporter of urban agriculture and commercial agriculture in the urban settings. However, it was apparent at the August 14, 2008 meeting that more can be done to apprise the ALC of initiatives that the City has undertaken. Staff suggest that the Commission be provided with information regarding the following initiatives.

5.1. Encouraging Community Gardens in City Centre Developments

The new City Centre Area Plan has a specific strategy to increase the provision of landscaped outdoor amenity space and the ability of residents to make use of it for garden plots and related activities. Accordingly, the provision of an additional 10% (minimum) of the net development site is required for these activities, the purpose of which is to provide for a combination of potential uses including urban agriculture. It has been estimated that this would be roughly equivalent to 25 - 40 ha (62 - 99 ac), calculated based on City Centre-wide residential and mixed-use net development site area. The new City Centre Area Plan also continues to require that parking podiums incorporate significant planting and related landscape features, which could be used for a variety of purposes including rooftop agriculture.

5.2. Adoption of a Green Roof Bylaw

Council adopted the "Green Roofs and Other Options Involving Industrial and Office Buildings Outside the City Centre Bylaw 8385" on October 14, 2008. This Bylaw allows for a variety of options including green roof, vertical farming and intensification of ground oriented systems. The Bylaw applies to industrial and office building permits outside the City Centre which are received after January 1, 2009 that occupy a gross floor area of 2,000 m² (21,529 ft²) or more. One of the options the building permit applicant can choose to meet under Bylaw 8385 is to install an intensive green roof, which could be used for local food production (community or commercial). In another option, the building permit applicant can choose to provide enhanced landscaping on the ground which could be used for local food production. Both of these options are assigned a greater weighting than other options and are viewed very favourably by the City as a means to potentially increase the amount of space for agriculture outside the City Centre.

5.3. Community Initiatives to Promote Urban Agriculture

The City has been proactive in supporting community initiatives such as the Terra Nova School Yard Project and Fruit Tree Sharing Farm Project to support the local Food Bank. In addition, the City has already provided over 200 community gardening plots throughout the City to promote viable, sustainable food production in the urban and urban-rural interface area in its efforts to identify and support opportunities to increase community garden sites.

Aside from community food growing, the City also encourages independent initiatives in support of urban agriculture such as educational and research programs with the goal to ultimately establish an urban agriculture research and education centre in Richmond through partnership with Kwantlen Polytechnic University. A modest pilot educational program has already become a reality as a result of this initiative. It is anticipated that as the program build success and demand increases that funding will become available through the university and other fund raising efforts to expand the program and research.

On the Garden City Lands, Council has endorsed the following uses to ensure that there will be no significant structures (other than the provision for the Trade and Exhibition Centre) on the City's portion of the Garden City Lands. The emphasis will be on open space uses to address the following needs in the community:

Community Wellness and Enabling Healthy Lifestyles

Richmond is committed to maintaining and improving community wellness and healthy lifestyles. Therefore, the provision of a variety of outdoor public amenities passive and active parks and open spaces, trails and pedestrian connections, play spaces for all ages and abilities, gathering places for community celebration, and youth oriented activity zones, as well as a range of outdoor community sport amenities and playing fields are envisioned to provide increased capacity for community use.

Urban Agriculture

The interest for urban agriculture is demonstrated by the demand for community gardens in Richmond. The City has constructed community gardens in four locations across the City and maintains lengthy waitlists for garden plots. The Garden City Lands could be a model for meeting the need for urban agriculture. The Garden City Lands and its location at the urban/agricultural interface presents a tremendous opportunity to engage the community in awareness building and active programming related to agriculture and food security. Richmond is committed to determining how best to do this.

Showcasing Environmental Sustainability

The Garden City Lands could play a significant role in showcasing environmental sustainability. This could both mitigate the impacts of urban development and integrate environmental resources into urban areas. The size and location of the Garden City Lands could present a unique opportunity to develop other environmental showcases such as the establishment of wetlands for stormwater management and habitat, the creation of an urban forest which would contribute to improved air quality, alternative energy technologies and improving the city's resilience to climate change.

6. Memorandum of Understanding with the ALC and Potential Process

In the event that the City's "Block Application" is successful, it is likely that a conditional preliminary approval will be issued and that final approval will be withheld until all conditions have been satisfied. Between the preliminary and final approvals, a MOU between the City of Richmond and the ALC (or similar legal instrument) will likely be required to ensue that the conditions/commitments are complied with over time. If the application proceeds to this stage, a MOU outlining the City's obligations would be presented to Council for consideration once details have been negotiated. Staff recommend that the City advise that the ALC that it is willing to enter into such an arrangement regarding the initiatives outlined in this report.

7. Staff Observations and Potential Strategy

- As indicated in their letter of November 6, 2008, the Musqueam and the CLC are not a willing seller – their intention is not to sell the land.
- Notwithstanding the Musqueam and the CLC's contention that they will not sell, should the City intend to continue to pursue efforts to acquire the site, our position would be significantly improved if the ALR application is approved and the MOU/PSA are satisfactorily completed. Under this scenario, the City would only have to try to acquire one half of the site, as opposed to the whole site. Strategically, it is better to secure ownership of half of the site before taking action to increase the City's ownership stake, than to relinquish the opportunity for the City of Richmond to own half of the site before pursuing ownership of the whole site.
- Should Council's goal be to keep as much as possible of the Garden City Lands in the ALR, this may also more likely be achieved if the application is successful. Staff recognize that removal of the Garden City Lands from the ALR is not supported by all members of Council and has become an important public issue. As previously noted, some members of Council would prefer the City take ownership of the full Garden City Lands site by acquiring Musqueam and the CLC's share, either before the ALC makes its decision on the application or after the decision on the application, regardless of the outcome. Staff have on more than one occasion analyzed these options and held discussions with the Musqueam and the CLC, due to the fact the City would gain title to approximately half of the lands and could choose to place Richmond's share back into the Reserve. The City could then attempt to acquire some or all of the Musqueam/CLC share, as well.
- If the City fails to meet the obligations made through the MOU and PSA, attempts to obstruct the process or negatively influence the ALC decision on the "Block Application", the Musqueam and the CLC may seek to recover lost financial benefit from the City.
- The CLC and the Musqueam are prepared to increase their contribution to agriculture – the City can also make a considerable contribution.

Potential Strategy:

- improve the opportunity for success by enhancing the application;
- utilize the most certain and expedient means (MOU and PSA) through which to gain control over as much of the Garden City Lands as possible and subject those lands to uses that are consistent with Council's goals; and
- negotiate through the rezoning/development process, green uses for a portion of the Musqueam/CLC share of the lands if the full site cannot be purchased.

Financial Impact

The cost of one time initiatives proposed within this report will be recovered from the new agricultural amenity contribution agreed to by the CLC and the Musqueam as follows:

| | |
|---|---------|
| Acceleration of Drainage and Irrigation Capital Works | \$4.5 M |
| Review of small lots in the ALR | \$0.5 M |

The ongoing cost of Bylaw enforcement in the ALR is estimated at \$190,000 annually. The CLC/Musqueam will contribute \$125,000 annually for two years and fine revenue (not known at this time) can also be used to offset city costs. Additional external legal costs are also anticipated.

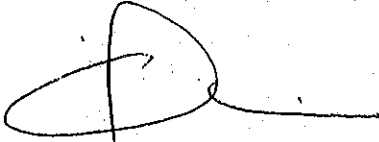
Conclusion

Many of the initiatives outlined in this report to benefit agriculture in Richmond have been contemplated by the City at various times in the past. Staff believe that Council's endorsement of these initiatives will enhance the "Block Application" to exclude the Garden City Lands from the ALR. The Garden City Lands proposal provides an opportunity for creating lasting legacy that will benefit agriculture in Richmond in the future by moving many of these worthwhile initiatives forward.

The additional agricultural amenity contribution from the Garden City Lands, which is outlined in this report, will enable the City to undertake, and perhaps accelerate, some on-going infrastructure work without relying on the availability of senior government funding. It will also create the capacity to collaborate with the ALC and the agricultural community to explore initiatives and improve bylaws and regulations to further protect and benefit agriculture. Equally as important, subject to the success of the "Block Application", the Agreement with CLC and the Musqueam makes it possible for the City to finally own approximately 50% of the site for a modest cost of \$4.7 M, to address community needs and to provide public amenities as outlined in this and previous reports related on the Garden City Lands.

Staff believe that the "Block Application" will be enhanced by the measures outlined in this report. Approval of the Application is necessary in order for the City of Richmond to obtain

ownership of 50% of the property and regulatory control over the entire site. The success of this project will also provide long term legacies that benefit agriculture in Richmond.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Cecilia Achiam, MCIP, BCSLA
Senior Program Manager, Corporate Programs Management Group
(604-276-4122)

Attachment 1: Letter from the CLC dated November 6, 2008



Thursday, November 6, 2008

Mr. George Duncan
Chief Administrative Officer
City of Richmond
6911 No.3 Road,
Richmond, BC V6Y 2C1

Dear Mr. Duncan:

Re: Garden City Lands

In preparing a response to the City's recent question regarding the possibility of a sale of all or part of the CLC/Musqueam interest in the lands to Richmond, I took the question up with our joint venture partner. I can confirm that at this point in time there is absolutely no interest on the part of either party to stray from the present course which includes the legal and binding agreements between us. The subject land is not for sale. I trust that this clarifies our position and intentions.

Yours truly,
CANADA LANDS COMPANY CLC LIMITED

Doug Kester
Vice President, Real Estate, Western Region

cc: Ken McGregor, Band Manager

Filename: Letter (G.Duncan) Nov. 6, 2008

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SCHEDULE 2 TO THE MINUTES OF
THE GENERAL PURPOSES
COMMITTEE MEETING OF MONDAY,
NOVEMBER 17, 2008.



HOUSE OF COMMONS
CANADA

JOHN CUMMINS, M.P.
DELTA-RICHMOND EAST

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November 17, 2008

Mayor and Council
City of Richmond
6911 No. 3 Road
Richmond, B.C.
V6Y 2C1

Dear Mayor and Council;

**Re: THE GARDEN CITY LANDS "BLOCK APPLICATION" FOR EXCLUSION
FROM THE AGRICULTURAL LAND RESERVE**

We are writing concerning the item on the agenda for Council's General Purposes Committee meeting today pertaining to a staff recommendation to modify the Agreement of Purchase and Sale for the Garden City Lands to extend the date limit for satisfaction of the Agricultural Land Reserve (ALR) Release Condition from December 31, 2008 to June 30, 2009.

Please be advised that we are both opposed to this modification and the extension of the time limit to appeal to the Agricultural Land Commission (ALR). Overwhelmingly, our constituents have indicated that they do not support the terms of the Agreement of Purchase and Sale and the related Memorandum of Understanding and they wish these lands to remain in the ALR. We reflected this community view in the public position we took in the recent federal election campaign.

Accordingly, with the support of our constituents, it is our intention to work with the Minister responsible for Canada Lands to return the Garden City lands to the Crown so that plans may be made to secure the lands in perpetuity for the benefit of our constituents.

Therefore, we request that you not support this staff recommendation.

Yours truly,

ON BEHALF OF:
(Signature on file)

Alice Wong, M.P.
Richmond

John Cummins, M.P.
Delta-Richmond East



City of RICHMOND

6911 No. 3 Road
Richmond, B.C. V6Y 2C1

Telephone: (604) 276-4128

Fax No: (604) 276-4332

MALCOLM BRODIE
MAYOR

November 26, 2008

SENT BY FACSIMILE – 613-990-2806

The Honourable Vic Toews, M.P., P.C.
President of the Treasury Board
Treasury Board of Canada
140 O'Connor Street
Ottawa, Ontario
K1A 0R5

Dear Minister Toews:

Re: Garden City Lands – Richmond, British Columbia

This letter is intended to obtain clarity from you as the senior minister responsible for the federal Treasury Board with regard to the government's intention and position on the above lands, declared surplus to federal government purposes in early 2001.

As you may be aware, in late 2002 the Treasury Board of Canada approved of the sale of the above 136 acre surplus property by the Department of Fisheries and Oceans to the Canada Lands Company CLC Limited (CLC). This decision quickly became the subject of litigation arising from a First Nation's land claim that was eventually set aside due only to a federally mediated tri-partite agreement between Richmond, the Musqueam Indian Band and CLC.

This landmark agreement and the benefits that will flow to the Musqueam people, the citizens of Richmond and the Canadian taxpayers has been under constant threat by rumours and statements about the federal government's position with regard to the future of these lands.

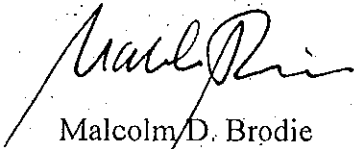
Most recently, the City Council received a letter signed by the M.P.s for Richmond and Delta-Richmond East stating their opposition to the agreement between the parties and opposing an extension to our agreement (copy attached). I have two questions for you as the Honourable Minister responsible:

1. Does the federal government have any plans or intentions to undo the agreement between Richmond/Musqueam/CLC to re-acquire the subject lands?; and
2. Does the opinion expressed by the two local M.P.s represent the position of the Government of Canada?

A response at your earliest convenience would be much appreciated as our Council may be asked to consider the question of continuing to honour the original agreement as early as this Tuesday, December 2, 2008. A statement clarifying Canada's position would immensely inform Council's choices going forward.

Thank you for your time and kind attention to this matter.

Yours truly,



Malcolm D. Brodie
Mayor

Att.

President
of the Treasury Board



Président
du Conseil du Trésor

Ottawa, Canada K1A 0R5

December 1, 2008

Mr. Malcolm D. Brodie
Mayor
City of Richmond
6911 No. 3 Road
Richmond, B.C. V6Y 8C1

Dear Mayor Brodie,

Thank you for your letter dated November 26, 2008 requesting clarification of the federal government's intentions for the Garden City lands in Richmond, British Columbia.

I am responding to your letter in conjunction with the Hon. Rob Merrifield, who as Minister of State-Transport, oversees the federal government's relationship with Canada Lands Corporation (CLC). We are glad to take this opportunity to clarify the federal government's position.

Federal departments wishing to purchase land valued at more than \$1.9 million must go through a process involving the Treasury Board of Canada. To date, no federal department has engaged that process in an effort to acquire the Garden City lands.

Typically, informal discussions take place with CLC before the Treasury Board process is engaged. Minister Merrifield can confirm that CLC has not received any indication, formally or informally, that any federal department has an interest in purchasing the property.

Thank you for providing us an opportunity to clarify the federal government's position.

Sincerely,

Hon. Vic Toews
President of the Treasury Board

Hon. Rob Merrifield
Minister of State, Transport



Mr. Randy Fasan
Director, Urban Design and Planning
Canada Lands Company CLC Limited
666 Burrard St.
Suite 1850-Park Place
Vancouver, BC
V6C 2X8

4 December 2007

Dear Mr. Fasan

Further to our recent discussion regarding the property known as the Garden City Site, in Richmond, British Columbia, this is to confirm the Treasury Board Secretariat policy position regarding the future of these lands.

The Treasury Board (TB) Policy on the Management of Real Property (the Policy) and its related Directive on the Sale or Transfer of Surplus Real Property (Disposal Directive) dictate the accountabilities of Deputy Ministers, when considering real property management decisions and related transactions.

With respect to the Garden City site in Richmond, the sale to Canada Lands Company CLC Limited (CLC) was concluded in accordance with the requirements set out in the Disposal Directive. Title to these lands was transferred to CLC in fee simple and is no longer the property of Her Majesty in Right of Canada ie Federal Real Property.

I understand that there has been some confusion regarding the future of these lands if CLC, and its partners the City of Richmond and the Musqueam Indian Band, are not successful in having these lands removed from the Agricultural Land Reserve Designation.

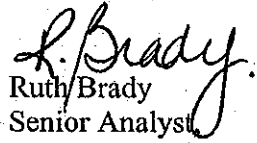
The bottom line is that the lands are owned by CLC, not the federal government, so it will be up to CLC to develop appropriate management and/or disposal strategies. There is no automatic reversion of these lands to the federal government.

The Policy, dictates that federal Ministers can only acquire lands in support of mandated programs of their departments. Should a federal department consider the purchasing these lands from CLC at some point in the future, it would need to have identified the new investment requirement in its Long Term Capital Plan or Investment Plan with clear links to its program mandate.

To date, we are not aware of any department identifying such a requirement, so unless there is documented evidence by a department the contrary, I suggest any reference to re-acquisition by the federal government should be removed from correspondence.

I trust this helps clarify the situation.

Sincerely,



Ruth Brady

Senior Analyst

Real Property and Materiel Policy Division

Treasury Board Secretariat



MUSQUEAM INDIAN BAND

6735 SALISH DRIVE
VANCOUVER, B.C.
CANADA V6N 4C4
TELEPHONE: 604 263-3261
FAX: 604 263-4212

November 28, 2008

Mayor Malcolm Brody
City of Richmond
— 6911 No. 3 Road
Richmond, BC V6Y 2C1

BY FAX: 604.276.4332

Dear Mayor Brody,

Re: The Garden City Lands

I am writing in response to the discussion that took place at the November 17 meeting of the Richmond General Purposes Committee and the letter that was presented to that meeting from two local Members of Parliament, Alice Wong and John Cummins. Their letter refers to their intention "to work with the Minister responsible for Canada Lands to return the Garden City Lands to the Crown so that plans may be made to secure the lands in perpetuity for the benefit of our constituents".

Musqueam has every confidence that Canada Lands will respect it's legal obligations, but since the suggestion is being made that the Lands can somehow be transferred without the prior approval of Musqueam, I am sending this letter to you.

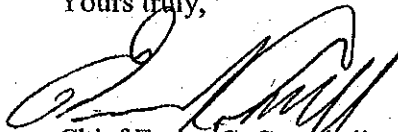
On behalf of the Musqueam Indian Band, I would like to state the following.

- (1) Under the direction of the Federal Court of Canada, the Federal Crown was required to consult and accommodate Musqueam with regard to our Aboriginal title rights. This court direction led to the MOU and other agreements between Musqueam, the Federal Crown, CLC and the City of Richmond regarding the sharing of the Garden City Lands. Accordingly, Musqueam will continue to defend our constitutionally protected rights and this accommodation agreement and settlement including, if necessary, by a return to the courts, although it is not our preference to do so.
- (2) We have always taken active steps to defend our Aboriginal title to our traditional territory, including the Garden City Lands, and will continue to do so.
- (3) In addition to our Aboriginal title to the Lands, we also now have an express and documented undivided 50% beneficial interest under the various agreements reached between the City of Richmond, the Federal Crown and Musqueam, as well as under the Joint Venture Agreement with Canada Lands.

- (4) There can be no future transfer of the Lands by Canada Lands without our consent, since such a transfer would be illegal, breach of trust and breach of the Joint Venture Agreement.
- (5) Any party receiving a transfer without our prior consent would be participating in an actionable breach of trust.
- (6) If Canada were to receive the Lands without our consent, it would also be in breach of its duty to act honourably and to consult and accommodate us as required by Supreme Court of Canada decisions.
- (7) Musqueam has no intention of selling its interest in the Lands to anyone other than as set out in the Joint Venture Agreement and the Purchase Agreement with the City of Richmond.
- (8) Consistent with the intention of Richmond and CLC, Musqueam also has no intention of allowing the Lands to remain in its current state or using the Lands for farming – Musqueam has an equal right with other owners of land to obtain the benefits of the highest and best use of the Lands.
- (9) Although in order to implement the compromises reflected in the MOU and the agreements resulting from its implementation, we have participated with the City in the application to remove the Lands from the Agricultural Land Reserve, we have done so on the express condition that we reserve all our rights, including our right to challenge the application to the Lands of provincial legislation such as the *Agricultural Land Commission Act* and municipal regulations.
- (10) Musqueam stands behind the MOU as an historic agreement that was the first major agreement reached after the decision of the Supreme Court of Canada in the *Haida* case that urged the parties to seek to resolve their disputes by agreements that reconciled the interests of Aboriginal Canadians with those of other Canadians. The possible termination of the Purchase Agreement among CLC, Musqueam and the City of Richmond would be a major setback for all Canadians and would have wide-ranging implications for the settlement of disputes in the future over the ownership of land in this and other provinces.

Thank you for your attention to this matter and please contact me should you wish to have further discussion.

Yours truly,



Chief Ernest C. Campbell

c. Canada Lands Company.





Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

December 5, 2008

Maria Morellato, Q.C.
Partner
Dir: 604-631-3324
maria.morellato@blakes.com

Musqueam Indian Band
6735 Salish Drive
Vancouver, BC V6N 4C4

Reference: 91691/31

Attention: Chief and Council

Re: Garden City (File No. 91691/31)

Dear Sirs/Mesdames:

You have requested our opinion regarding the legality of any transfer by Canada Lands Company CLC Limited ("CLC") of lands known as the Garden City Lands (the "Lands").

The Lands are the subject of several legal documents which arose out of the settlement of legal proceeding brought by Musqueam. These documents include: (1) a Memorandum of Understanding ("MOU") between the CLC, the Department of Fisheries and Oceans Canada ("DFO"), the Musqueam Indian Band ("Musqueam") and the City of Richmond ("Richmond"); (2) a Joint Venture Agreement ("JVA") between Musqueam, Garden City Ventures Limited Partnership (of which Musqueam is the beneficial limited partner) and CLC; and (3) a Purchase Agreement ("PA") between Richmond, CLC and Musqueam and Garden City Ventures Limited Partnership ("Limited Partnership").

The JVA and MOU unequivocally provide, and the PA expressly acknowledges, that Musqueam is entitled to an undivided 50 percent beneficial ownership of the Lands. Accordingly, apart from any consideration of Musqueam's entitlement to the Lands based on Aboriginal title, there can be no legal transfer of the Lands without Musqueam's consent since Musqueam is a beneficial owner of the Lands. Therefore, any attempt to compromise or undermine Musqueam's beneficial interest in these Lands is actionable, *inter alia*, as a breach of trust and would likely lead to injunctive relief preventing any wrongful alienation of Musqueam's interests. We elaborate upon this opinion below.

Legal Rights and Obligations of the Parties

On or about March 18, 2005, representatives of Richmond, CLC, the Department of Fisheries and Oceans Canada ("DFO") and the Musqueam executed an MOU which addressed and settled an outstanding dispute between the parties regarding the disposition of the Lands. Musqueam had been successful in obtaining an injunction restraining the sale of the Lands by DFO to CLC on the basis that the Federal Crown was attempting to sell the Lands without first attempting to consult and accommodate Musqueam's Aboriginal title interests.¹ Following this decision of the Federal Court

¹ *Musqueam Indian Band v. Governor in Council of Canada et al.*, 2004 FC 579, at paras. 43-49.

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which restrained the sale of the Lands and, in light of the Supreme Court of Canada's ruling in *Haida Nation v. British Columbia (Minister of Forests)*² directing that the Crown is obliged to consult and where appropriate accommodate First Nations interests, the MOU was successfully negotiated between the parties with the assistance of mediator Bob Plecas. This MOU was, to our knowledge, the first major agreement of this nature to follow the *Haida* decision and has been recognized as an historic achievement, especially as it involved three levels of government – Federal, First Nation and Municipal. The failure to implement this agreement could potentially have a significant impact on the future resolution of claims to land in the Province and will likely be a factor taken into account by a court in any future proceedings.

Pursuant to the MOU, Richmond, DFO, CLC and Musqueam agreed to collaborate and to resolve their differences by implementing, *inter alia*, the following terms of agreement:

1. the Garden City Lands would be transferred from DFO to CLC in trust for Musqueam and itself;
2. CLC would hold, through an express declaration of trust, an undivided 50 percent interest in the Garden City Lands for the benefit of Musqueam under the terms of the JVA;
3. Once these lands were transferred from DFO to CLC, Richmond would execute the PA, with the consent of Musqueam, and would receive a 50 percent interest in the Lands for a specified purchase price.

The JVA and PA contemplated by the MOU were duly executed by the parties. In return for these and other terms of agreement, Musqueam discontinued its Federal Court proceeding and agreed to suspend the interlocutory injunction preventing the disposition of the Lands. Musqueam did so in good faith in order to facilitate the solution agreed upon by all parties as outlined above.

Section 3.1 of the JVA begins with the heading "Declaration of Trust by CLC in favour of Joint Venturers" and provides specifically as follows:

"... CLC holds and will continue to hold registered title to the [Garden City] Lands as bare trustee for and on behalf of

- (a) the [Musqueam owned] Limited Partnership as to an undivided an unregistered 50% beneficial interest; and
- (b) CLC as to an undivided and unregistered 50% beneficial interest.

For greater certainty, CLC acknowledges and agrees that:

- (c) pursuant to the Declaration of Trust, CLC is acting as a trustee of the undivided and unregistered 50% beneficial interests of each of the Limited

² [2004] 3 S.C.R. 511, 2004 SCC 73



Partnership and CLC in the [Garden City] Lands in all its dealing with the [Garden City Lands], including the exercise of any discretion or the taking of any action by CLC under the ...[PA]..."

Section 3.2 of the JVA further provides that the CLC covenants and agrees "in its capacity as a trustee of the beneficial interest of the Limited Partnership" that it "will not encumber, transfer or otherwise dispose of the [Garden City] Lands" except as agreed to by Musqueam and CLC in the JVA and in accordance with the terms of the PA. There is no provision in either the JVA or PA which permits CLC (or any other party for that matter, including the Crown) to dispose of Musqueam's current beneficial interest in the Lands without its consent. Rather, the MOU, the JVA and the PA are structured to protect Musqueam's beneficial interest in the Lands.

For example, the PA itself, whereby Richmond purchases its interests in the Lands, expressly acknowledges Musqueam's 50 percent beneficial interest, through its Limited Partnership, in the preamble at paragraph D. Moreover, section 3.2 of the PA sets out "Covenants of Co-Operation" whereby Richmond, CLC and Musqueam each agree to employ "their respective commercially-reasonable efforts to expedite and complete the development approval process described in Section 3.1 of the Agreement." Richmond expressly agrees to support and recommend the release of the Lands from the Agricultural Land Reserve in Section 3.3. Simply put, each of the parties reached an agreement to work together to benefit from the ownership and development of the Lands. In order to do so, Musqueam made important concessions in agreeing to accept the application of provincial and municipal regulation of the Lands as set out in the MOU. If the MOU is not implemented, Musqueam will be free to fully exercise its legal rights including challenging such provincial and municipal land regulation on the basis that the Lands are outside of provincial and municipal jurisdiction pursuant to section 91(24) of the *Constitution Act 1867*.

Notably, the PA contains an ALR Release Condition at Section 4.2 which provides that if the Lands are not released from the ALR by a certain date, the PA agreement becomes null and void and of no further effect. The current deadline date under this provision is December 31, 2008, although this date may be extended by agreement.

It is of considerable importance to note that if Richmond chooses not to agree to an extension of the December 31st deadline, it forfeits all rights under the PA in connection with the acquisition of its approximately 50 percent interest in the Lands. However, the JVA will continue to be a valid and enforceable instrument such that Musqueam and CLC will continue to be equal beneficial owners of the entire Lands including the portion that would have been sold to Richmond at a reduced price under the PA. The rights and obligations relating to the beneficial interests of CLC and Musqueam under the MOU and the JVA are not conditional upon the implementation of the PA and survive its dissolution.

Legal Implications

Musqueam has been advised that some people are proposing that the whole of the Lands be transferred to the Federal Crown or to Richmond. Musqueam has received assurance from

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representatives of CLC that CLC will adhere to its trust and contractual obligations to Musqueam under the MOU and the JVA, and is fully confident that it will do so. However, in view of these proposals, Musqueam has requested that we express our views on the legal implications of these proposals

Since title to the Lands is now held by CLC on an express trust for Musqueam as to an undivided 50 percent interest, no one, including the Federal Crown or Richmond, has power to cause a transfer of the Lands without the express consent of Musqueam. Any attempt to do so would clearly constitute participation in a breach of trust and result in serious liability for all those involved.³ Furthermore, any attempt to interfere with the terms of the JVA would be actionable in tort for inducing breach of contract⁴ Musqueam would be entitled to seek injunctive relief and significant compensation for the wrong-doing, including exemplary damages.

Any attempt by the Federal Government to cause a transfer of the Lands without the consent of Musqueam would also be a clear breach of the Crown's fiduciary duty⁵ and its duty to act honourably as established by the Supreme Court in *Haida*.⁶ To undermine a negotiated resolution triggered by the previous injunction order obtained by Musqueam (as described above) would violate the direction of the Supreme Court in *Haida* that the Crown ought to facilitate the resolution and reconciliation of outstanding aboriginal title disputes and act honourably at all times in its dealings with Aboriginal peoples.

It would be a rather remarkable scenario for either Richmond or the Federal Crown to now take measures to circumvent the MOU and to attempt to prevent Musqueam from exercising its beneficial interests in the Lands, particularly when the Federal Crown, through the DFO, responded to the injunction order by engaging in the process of accommodating Musqueam's rights. By entering into the MOU in the first instance; the Federal Crown supported the arrangement leading to the transfer of the

³ See *Barnes v. Addy* (1874), L.R. 9 Ch. App. 244; *Air Canada v. M & L Travel Ltd*, [1993] 3 S.C.R. 787.

⁴ In an action for the tort of inducing a breach of contract, specific performance may be awarded where an award of damages would not suffice as an appropriate remedy: *Oceanair Investment Ltd. v. Redman*, [1988] B.C.W.L.D. 3845, additional reasons [1989] B.C.W.L.D. 1394 (B.C.S.C.). See also: *Verchere v. Greenpeace Canada*, [2004] B.C.J. No. 864, 241 D.L.R. (4th) 327 (B.C.C.A.) (leave to appeal denied July 30, 2004, [2004] S.C.C.A. No. 332) at paras. 29-32.

⁵ When one party has an obligation to act for the benefit of another and that obligation carries with it a discretionary component, the party thus empowered becomes a fiduciary. Equity will then supervise the relationship by holding him to the fiduciary's strict standard of conduct: *Guerin v. Canada*, [1984] 2 S.C.R. 335, S.C.J. No. 45 (S.C.C.) at 384 (cited to S.C.R.); *International Corona Resources Ltd. v. Lac Minerals Ltd.*, [1989] 2 S.C.R. 574, S.C.J. No. 83 (S.C.C.) at para. 147. *Hodgkinson v. Simms*, [1994] S.C.J. No. 84, [1994] 3 S.C.R. 377 (S.C.C.) at para. 26. The Crown, as fiduciary, will be held to "a high standard of honourable dealing with respect to the aboriginal peoples of Canada": *R. v. Sparrow*, [1990] 1 S.C.R. 1075, S.C.J. No. 49 (S.C.C.) at para. 62.

⁶ *Haida, supra*



50 percent undivided beneficial interest in the Lands to Musqueam through the joint venture arrangement with CLC. It would be an extraordinary reversal of the Crown's original efforts to reach a workable resolution with Musqueam if it were to now resile from the spirit and intent of the MOU. Such a reversal would clearly be actionable.⁷ Musqueam need only seek to enforce the terms of the trust embodied in the JVA and any attempt to dispose of the Lands in a manner contrary to Musqueam's wishes and best interests would, very likely, be enjoined yet once again by court order.

Conclusion

Any proposal that the Lands be transferred to any party without Musqueam's consent constitutes a breach of trust. Transferring the Lands without Musqueam's consent would also be an actionable wrong in tort for inducing breach of the contractual terms in the JVA for those involved. Further, constitutional law imposes on the Crown the duty to act honourably in negotiating agreements, such as the MOU, with First Nations. Crown involvement would also constitute a breach of fiduciary duty. As noted above, specific performance for the return of the Lands would also be available in such circumstances as well as compensation for related losses. Furthermore, the Band would have a strong case for an interlocutory injunction to prevent any purported transfer.

We would be pleased to address this issue with you in more detail at your convenience.

Yours truly,

Maria Morellato

MM/nic

c: Leona Sparrow
Jim Reynolds
Band Manager

⁷ In the absence of a express legislative intent to abrogate contractual rights and obligations, the Crown is bound by such obligations; the Supreme Court of Canada has reasoned that the Crown is bound by its word, not solely its whim: *Wells v. Newfoundland*, [1999] 3 S.C.R. 199, S.C.J. No. 50 (S.C.C.) at para. 46, cited with approval in *Ermieskin Indian Band and Nations v. Canada*; [2006] F.C.J. No. 1961 (F.C.A.) at para. 199.



MUSQUEAM INDIAN BAND

6735 SALISH DRIVE
VANCOUVER, B.C.
CANADA V6N 4C4
TELEPHONE: 604 263-3261
FAX: 604 263-4212

March 6, 2008

Mayor and Council
Richmond City Council
6911 No. 3 Road
Richmond, BC V6Y 2C1

Dear Mayor and Council,

Re: The Proposal to Defeat the Trust Protecting Musqueam's Interest in the Garden City Lands Introduction

During the discussion at the City Council meeting on February 25, 2008 on whether to hold public hearings on the application to remove the Garden City Lands from the ALR, Councillor Steves and, one of the speakers, Mr. Jim Wright, suggested that, somehow, the Lands could be transferred to the Federal Government and then transferred by the Federal Government to the City (see also the letter from Mr. Wright in the Richmond Review of February 29, 2008). They were not clear on how this objective to defeat the Musqueam interest in the Lands might be achieved, especially given the statement from the Federal Department of Finance in a letter dated December 4, 2007 that "[t]he bottom line is that the lands are owned by [Canada Lands Company], not the federal government...I suggest that any reference to re-acquisition by the federal government should be removed from correspondence."

This letter responds to this proposal to defeat the Musqueam interest in the Lands and points out that any attempt to do so would not only be inconsistent with the Memorandum of Understanding dated March 18, 2005 (the "MOU") but also would be a serious breach of trust. We wish to make it clear that we are not questioning whether that the City or the Federal Government would even consider such an irresponsible proposal. However, since the suggestion has been made by some people, however vaguely, we must respond to it to avoid any misunderstanding of the situation or any suggestion that by our silence we are somehow acquiescing in it by not responding formally. We regret having to do so since we are confident that the City would not have anything to do with participating in a breach of trust. We would also prefer to continue to work with the City in the spirit of partnership as stressed by Councillor Nolan Charles on behalf of the Musqueam at the Richmond City Council meeting on February 25 meeting rather than engage in the confrontational approach that Councillor Steves seems to prefer.

Please note that this letter only deals with the express trust in favour of Musqueam in the Garden City Lands. It does not deal with Musqueam's Aboriginal rights and title to those Lands which are expressly preserved by the MOU and Musqueam's participation in the Application to the Agricultural Land Commission.

The Memorandum of Understanding

In order to settle the litigation among them and to induce Musqueam to agree to the removal of the injunction that it had obtained to prevent the proposed transfer of the Garden City Lands to Canada Lands, the MOU was negotiated among the Musqueam, the City of Richmond, Canada Lands Company CLC Limited ("Canada Lands") and the Federal Government represented by the Minister of Fisheries and Oceans and by the Minister of State (Multiculturalism) and signed on March 18, 2005. It was approved by all but one of the members of the Richmond City Council and made available to the public on the City's website. Therefore, its terms (including the trust provisions quoted below) were well known to the City as well as the Federal Government.

The Trust in favour of Musqueam

Paragraph 1(5) of the MOU states:

"Prior to transfer of the Garden City Property by the federal Crown to CLC:

- (a) CLC and Musqueam will enter into a Joint Venture Agreement ("JVA") under which, *inter alia*, CLC will agree that it will hold an undivided and unregistered 50% beneficial interest in the Garden City Property in trust for Musqueam, on the terms set out in this MOU and the parties thereto will agree upon the methodology of creation and implementation of a comprehensive plan for the development, servicing, sale and distribution of profits (and funding and sharing of related costs) relating to the Garden City Property. For greater certainty, DFO agrees that it will not transfer the Garden City Property to CLC until Musqueam has approved and signed the JVA which includes the said declaration of trust by CLC." [Emphasis added.]

This trust is confirmed in section 1 (8) which makes the City's power to regulate use of the Lands conditional on the MOU including the trust in favour of Musqueam:

"Once the Garden City Property is transferred from the federal Crown to CLC, it will be held in fee simple and subject to the City's zoning regulations, OCP guidelines, development and building bylaws and regulations and the understandings of the Parties as set out in this MOU and the JVA including the trust in favour of Musqueam described in subsection 1(5)." [Emphasis added.]



Section 3 (1) also underlines the importance of the trust:

“This MOU is without prejudice to the positions of the Parties with respect to any rights of the Parties. This MOU is without prejudice to any Aboriginal rights or Aboriginal title of Musqueam but the Parties agree that, once the JVA (including the trust described in subsection 1(5)) is entered into and the Garden City Property is transferred by the federal Crown to CLC, and held in trust by CLC for Musqueam as described in subsection 1(5), the Parties will have fulfilled any obligations that they may have to accommodate Musqueam’s interests respecting the Garden City Property.

In view of the above provisions, there can be no question that both the City of Richmond and the Federal Crown were fully aware that Canada Lands were going to hold the entire Garden City Lands in trust for Musqueam as well as for itself. No transfer of the Lands could take place from the Federal Government to Canada Lands until the trust had been created [see paragraph 1(5)(a)] and the agreement that the City’s zoning regulations etc. would apply was expressly subject to the trust [see paragraph 1(8)].

In accordance with the above terms of the MOU, Musqueam and Canada Lands entered into a Joint Venture Agreement that, in part, creates the trust in favour of Musqueam as to an undivided 50% interest in the entire Garden City Lands. Also, the Lands have been transferred to Canada Lands subject to the above trust and, as indicated above, the federal government has indicated that it has no intention of taking them back.

Participating in a Breach of Trust

The liability of a third party, such as the City of Richmond and the Federal Government, for participation in a breach of trust is a well-established principle of law going back at least to *Le Neve v. Le Neve* in 1747.¹ In recent years, the Supreme Court of Canada has applied and extended this area of the law.

The elements of “knowing receipt” were restated and applied in the 1997 decision of the Supreme Court of Canada in *Citadel General Assurance Co. v. Lloyds Bank Canada*² in which La Forest J. said this type of liability arises when “strangers to the trust...receive trust property for their own benefit and with knowledge that the property was transferred to them in breach of trust.”³

¹ (1747) Amb 437, 27 E.R. 291. See generally: James I. Reynolds, “Aboriginal Title and the Transmission of Fiduciary Obligations From the Crown to Business – Is the Leap of Logic Galactic or Synaptic?” in Continuing Legal Education Society of British Columbia, *Fiduciary Obligations – 2003*.

² [1997] 3 S.C.R. 805.

³ *Ibid* at para. 24.



Conclusion

There can be no question that, if (which is not for a moment considered a possibility) without the prior consent of Musqueam,:

(1) Canada Lands were to breach its trust obligation to Musqueam and purport to transfer the Garden City Lands to the Federal Government, and

(2) the Federal Government were then to purport to transfer any of the Lands to the City,

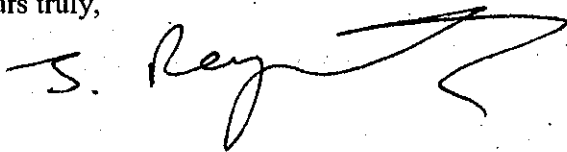
both the City and the Federal Government would be civilly liable to Musqueam, together with Canada Lands, for breach of trust.

Further, the Federal Government would be in clear violation of the fiduciary obligation that it owes to the Musqueam as established by the Supreme Court of Canada in the leading case of *Guerin v. The Queen*⁴ in which Musqueam successfully sued the Federal Government for breach of fiduciary obligation.

Such a shocking breach of their legal obligations cannot be seriously contemplated by any responsible representative of either the City or the Federal Government and the very suggestion must be rejected as being based on ignorance of basic principles of law as well as of the clear provisions of the MOU relating to the trust in favour of Musqueam.

In conclusion, we wish to confirm that, although Musqueam will continue to protect its legal rights including its beneficial interest in the Garden City Lands, its strong preference is to work with the City, as well as Canada Lands, to implement the agreement reached by all parties in good faith in the MOU.

Yours truly,



James I. Reynolds LL.B, Ph.D.,
Barrister & Solicitor,
General Counsel, Musqueam Indian Band

⁴ [1984] 2 S.C.R. 335; see generally: James I. Reynolds, *A Breach of Duty – Fiduciary Obligations and Aboriginal Peoples* (Saskatoon: Purich, 2005).



**SUMMARY OF OWNERSHIP AND JURISDICTION OVER
GARDEN CITY LANDS DEPENDING ON WHETHER
MEMORANDUM OF UNDERSTANDING (“MOU”) AND
PURCHASE AGREEMENT (“PA”) ARE IMPLEMENTED**

| | If MOU/PA Are Implemented | | If MOU/PA Are NOT Implemented | |
|----------|----------------------------------|---------------------|--------------------------------------|---------------------|
| | <u>Ownership</u> | <u>Jurisdiction</u> | <u>Ownership</u> | <u>Jurisdiction</u> |
| COR | Yes ¹ | Yes ² | No ³ | ? ⁴ |
| Musqueam | Yes ⁵ | No ⁶ | Yes ⁷ | ? ⁸ |
| CLC | Yes ⁹ | No | Yes ¹⁰ | No |

¹ By MOU/PA, all 3 parties have agreed that COR will have an entitlement to an interest in the Lands if certain conditions (including removal of Lands from the ALR) are satisfied.

² By MOU/PA, all 3 parties have agreed that COR’s land use control by-laws will apply.

³ COR has no legal entitlement to any interest in the Lands outside of the MOU/PA – see Memoranda from Lang Michener, the solicitors to COR, dated Nov. 22, 2007 and Feb. 22, 2008.

⁴ There is a serious legal question whether either the Province or COR will have jurisdiction over the Lands in the absence of the agreement to accept COR jurisdiction contained in the MOU/PA. If Musqueam is successful in establishing Aboriginal title to the Lands, this may result in federal/first nation and not provincial/municipal jurisdiction applying – see *Tsihqot’in Nation v BC*, 2007 BCSC 1700 and Supreme Court of Canada cases relied upon in that case by Mr. Justice Vickers. Also, if Musqueam is successful in obtaining Indian reserve status for the Lands under the *Indian Act*, provincial and municipal laws will not apply to regulate use of the Lands – *Constitution Act 1867* section 91(24); *Surrey v. Peace Arch Enterprises Ltd* (1970); 74 W.W.R. 380 (BCCA).

⁵ Musqueam and CLC have existing legal entitlement to equal shares in the Lands with CLC holding the Lands as trustee for each of them as to a 50% interest. Musqueam has also asserted Aboriginal title to the Lands.

⁶ See note # 2.

⁷ See note # 5.

⁸ See note # 4.

⁹ See note # 5.

¹⁰ See note # 5.

Prepared by: Jim Reynolds, General Counsel, Musqueam Indian Band



CANADA LANDS COMPANY
SOCIÉTÉ IMMOBILIÈRE DU CANADA

Attachment 1

Thursday, November 6, 2008

Mr. George Duncan
Chief Administrative Officer
City of Richmond
6911 No.3 Road,
Richmond, BC V6Y 2C1

Dear Mr. Duncan:

Re: Garden City Lands

In preparing a response to the City's recent question regarding the possibility of a sale of all or part of the CLC/Musqueam interest in the lands to Richmond, I took the question up with our joint venture partner. I can confirm that at this point in time there is absolutely no interest on the part of either party to stray from the present course which includes the legal and binding agreements between us. The subject land is not for sale. I trust that this clarifies our position and intentions.

Yours truly,
CANADA LANDS COMPANY CLC LIMITED

Doug Kester
Vice President, Real Estate, Western Region

cc: Ken McGregor, Band Manager

Filename: Letter (G.Duncan) Nov. 6, 2008

Proud Major
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Canada



CANADA LANDS COMPANY
SOCIÉTÉ IMMOBILIÈRE DU CANADA

December 3, 2008

DELIVERED BY HAND

CITY OF RICHMOND
 6911 No. 3 Road
 Richmond, British Columbia
 V6Y 2C1

ATTENTION: MAYOR AND CITY COUNCIL

Honourable Mayor and Councillors:

Re: Canada Lands Company CLC Limited ("CLC"), Musqueam Indian Band ("Musqueam") and City of Richmond (the "City") and Garden City Lands, Westminster Highway and No. 4 Road, Richmond, BC

We refer to the Agreement of Purchase and Sale made among the City, CLC, Musqueam and Garden City Ventures Limited Partnership (the "PSA").

We understand that Richmond City Council is scheduled to consider, prior to the holiday break, a proposal to approve of the execution of an agreement with CLC and Musqueam to extend the "deadline date" for satisfaction of a condition precedent in the PSA relating to the approval by the British Columbia Agricultural Land Commission of the release of the Garden City Lands from the B.C. Agricultural Land Reserve.

This letter is respectfully submitted by CLC to express our position and concerns with respect to this matter.

The PSA was extensively negotiated among representatives of the City, Musqueam and CLC prior to its execution. Following execution of the PSA, the issue of whether the City should support the release of the Garden City Lands from the Agricultural Land Reserve was thoroughly discussed by Council, with extensive public input, on several occasions.

It has been stated (and, in our view, demonstrated) many times over that implementation of the objectives stated in the Memorandum of Understanding ("MOU") among the Department of Fisheries and Oceans, the City, Musqueam and CLC offers substantial anticipated benefits to the City (including a right to acquire 50% of the Garden City Lands as "Public Lands", as well as the creation of a vibrant new precinct of the City of Richmond), CLC and the people of the Musqueam First Nation (through the expected generation of financial benefits through the development of the "JVA Lands").

The execution of the MOU (and its implementation through the execution of the agreements contemplated therein, including the PSA and the Joint Venture Agreement between CLC and Musqueam) were achievements of historic significance, offering a precedent for cooperation and reconciliation among First Nations and non-aboriginal Canadians and various levels of Canadian government.

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Suite 1850, Park Place, 666 Burrard Street, Vancouver, B.C. Tel. 604 775 7043 Fax 604 775 7018 E-mail Dkester@clc.ca www.clc.ca

... /2

Canada

*Honourable Mayor and City Councillors
City of Richmond
December 3, 2008*

CLC is deeply concerned that the efforts and achievements of all parties to the MOU and the PSA over the past three years, as well as the promise of benefits to the Musqueam First Nation and other citizens of Richmond, the Province of British Columbia and Canada, may again be jeopardized through the distribution of misinformation or deliberate misinterpretation of the terms and implications of the MOU, the PSA and the CLC/Musqueam Joint Venture Agreement.

This letter is respectfully submitted for consideration by Mayor and Council (together with an accompanying letter from our solicitors, Bull, Housser & Tupper, LLP) to address the implications of the potential termination of the PSA through any decision of City Council not to extend the deadline date for satisfaction of the ALR Release Condition set out in the PSA.

While the accompanying Bull, Housser & Tupper letter more fully sets out the implications of a decision by City Council leading to termination of the PSA, to address any misinterpretations of the terms and conditions of the PSA and the MOU, we reiterate that:

1. the MOU provides clear statements on the agreed objectives of DFO, the City, Musqueam and CLC with respect to the future development and use of the Garden City Lands;
2. the MOU has already been implemented through the execution of an agreement of purchase and sale between DFO and CLC, the PSA and the CLC-Musqueam Joint Venture Agreement;
3. the Garden City Lands have already been transferred to CLC and Musqueam as equal beneficial owners and as joint venture partners and DFO and the Federal Crown have no further title to the Garden City Lands and, as recent correspondence from the Federal Treasury Board Secretariat states, there are no Federal procedures contemplating or authorizing any reconveyance of the lands to the Federal Crown statute to make it happen;
4. there are no agreements compelling or allowing the Garden City Lands to be reconveyed by CLC to the Federal Crown and under the terms of the CLC-Musqueam Joint Venture Agreement, no such transfer is permitted without the approval of both CLC and Musqueam;
5. if the PSA is terminated through non-satisfaction of the ALR Release Condition, CLC and Musqueam continue to be equal beneficial owners of the Garden City Lands and the City will have no right or entitlement in the Garden City Lands nor with respect to the possible acquisition of the "Public Lands" unless both CLC and Musqueam so agree; and

We understand that City Council have been asked to authorize the extension of the deadline date for satisfaction of the ALR Release Condition in the PSA. CLC respectfully request that City Council also consider the following facts in reaching a decision on the issues before prior to the holiday break:

... /3

*Honourable Mayor and City Councillors
City of Richmond
December 3, 2008*

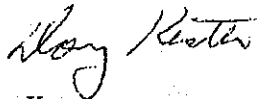
- (a) If the PSA becomes null and void, the City does not have any legal entitlement, to any of the lands except through normal process and land dedications legally permitted through its regulatory powers in rezoning applications. CLC and Musqueam will not agree to grant to the City rights to acquire any portions of the Garden City Lands as "Public Lands" on terms more favourable to the City than those already expressed in the PSA.
- (b) Having acted in good faith, including making commitments for substantial financial contributions to benefit agriculture in the province of British Columbia, Musqueam and CLC, as joint venture partners and equal beneficial owners of the Garden City Lands are asking the City to honour and perform its express obligations in the MOU and PSA.
- (c) Without a PSA in effect in connection with the Garden City Lands, any benefits available to for the citizens of Richmond through this process will likely have been lost for the foreseeable future.

We recall the excitement and admiration expressed across Canada for the historic achievement of the settlement and execution of the MOU and the resulting PSA and Joint Venture Agreement. If the PSA expires through the inaction of City Council it will be a sad outcome to what was considered by many across Canada to be a landmark achievement.

We respectfully encourage City Council to consider our submissions and to approve of the execution of a modification agreement to extend the time for satisfaction of the ALR Release Condition under the PSA to occur.

Sincerely,

CANADA LANDS COMPANY CLC LIMITED



Doug Kester
Vice President, Real Estate, Western Region



**Bull, Housser
& Tupper LLP**

3000 Royal Centre . PO Box 11130
1055 West Georgia Street
Vancouver . BC . Canada . V6E 3R3
Phone 604.687.8575 Fax 604.641.4949
www.bht.com

| | |
|---------------------|------------------|
| Reply Attention of: | Larry R. Sandrin |
| Direct Phone: | 604.641.4873 |
| Direct Fax: | 604.646.2696 |
| Email: | lrs@bht.com |
| Our File: | 03-3579 |
| Date: | December 5, 2008 |

VIA COURIER

Canada Lands Company CLC Limited
#1850 – 666 Burrard Street
Vancouver, BC V6C 2X8

Attention: Mr. Doug Kester

Dear Sirs:

Re: Canada Lands Company CLC Limited ("CLC"), Musqueam Indian Band ("Musqueam") and City of Richmond (the "City") and Garden City Lands, Westminster Highway and No. 4 Road, Richmond, BC

This letter is written in response to your recent request for a "plain English" summary of the legal implications of:

- A. the Memorandum of Understanding between Musqueam, the Department of Fisheries and Oceans ("DFO"), the City and CLC (the "MOU");
- B. the Richmond – CLC/Musqueam Purchase Agreement (the "PSA"); and
- C. the CLC/Musqueam Joint Venture Agreement (the "JVA"),

in light of the possibility that the City may fail to execute a Modification Agreement to extend the current December 31, 2008 "deadline date" for satisfaction of the "ALR Release Condition" under the PSA.

In the interests of brevity, I have not attempted to attach the relevant provisions of the MOU, the PSA nor the JVA.

In reply to your enquiry, I offer the following comments for consideration:

- 1. the MOU clearly states the agreed objectives of the all "Parties" to the MOU (DFO, the City, Musqueam and CLC) and the practical and sequential steps required to achieve those objectives;
- 2. the MOU has been substantively implemented through the transfer of the title to all of the Garden City Lands from DFO to CLC pursuant to the Purchase Agreement between DFO and CLC;
- 3. under the DFO-CLC Purchase Agreement, CLC paid \$5,000,000 to DFO upon closing, effectively ending all participation of DFO in the future ownership or development of the Garden City Lands;



**Bull, Houser
& Tupper LLP**

4. as contemplated in the MOU and in the DFO-CLC Purchase Agreement, the JVA and the PSA were executed concurrently with the DFO-CLC Purchase Agreement;
5. following acquisition of its undivided 50% beneficial ownership of the Garden City Lands through the JVA, Musqueam discontinued its Federal Court Action which had previously prevented the transfer of the Garden City Lands from DFO to CLC;
6. the balance of the objectives set out in the MOU are substantively reflected in the terms of the PSA and the JVA;
7. upon acquisition of the Garden City Lands under the DFO-CLC Purchase Agreement, the JVA became effective and Musqueam acquired an undivided 50% beneficial ownership of the Garden City Lands and the joint venture between Musqueam and CLC was created;
8. as has been publicly stated and as is obvious from reading the PSA, if the ALR Release Condition is not satisfied by the current deadline date of December 31, 2008 (as may be extended by further agreement of all parties to the PSA), the PSA will terminate;
9. upon termination of the PSA, all rights of the City under the PSA in connection with the possible acquisition of the "Public Lands" from CLC and Musqueam will also be terminated;
10. even if the PSA is terminated, the JVA will continue to exist, and under its terms, CLC and Musqueam will continue to be equal beneficial owners of all of the Garden City Lands;
11. Sections 1 (22) and 1 (23) of the MOU provide that if the City fails to take the sequential series of actions required to permit the Garden City Lands to be developed and the "Public Lands" to be transferred to the City (including any failure by the City to recommend removal of the JV Lands from the ALR or failing to approve of a rezoning of the JV Lands consistent with the terms set out in the MOU), then Musqueam, CLC and the City (but not DFO) are obligated to meet to discuss and negotiate alternative arrangements "**in order to give effect to the spirit of this MOU**", to the extent possible, in the changed circumstances";
12. if CLC and Musqueam are not satisfied with the outcome of any new negotiations with the City (including with the assistance of a mediator), neither party is obligated to reach any agreement with the City, nor to terminate the JVA but Musqueam and CLC (but not the City) may elect to terminate the MOU;
13. Sections 1 (22) and 1 (23) contain substantively similar statements recognizing Musqueam's rights to terminate the MOU and in such event to require "the Parties to co-operate in making whatever arrangements are necessary to restore each Party to the position that it was in prior to entering into this MOU";



Bull, Houser
& Tupper LLP

14. there are no provisions in any of the agreements to permit or require the Garden City Lands to be re-conveyed to DFO following transfer from DFO to CLC under the DFO-CLC Purchase Agreement;
15. the MOU has no contemplation of the possible refund of any monies by DFO to CLC;
16. indeed, the December 4, 2007 letter from the Treasury Board Secretariat on the subject of the possible return of the Garden City Lands to the federal Crown states: "**The bottom line is the lands are owned by CLC not the federal Government, so it will be up to CLC to develop appropriate management and/or disposal strategies**";
17. we understand clearly that CLC intends to respect and honour the JVA and the beneficial interests of Musqueam in the Garden City Lands and CLC is cognizant of the likelihood that if its objectives under the MOU are frustrated by the City's inaction and if any party attempts to force CLC to transfer any part of the Garden City Lands, Musqueam will recommence litigation to the same substantive effect as "the Litigation" described in the MOU and which was discontinued by Musqueam through the implementation of the DFO-CLC Purchase Agreement, the JVA and the PSA;
18. accordingly, unless the City is prepared to honour its obligations under the PSA, all of the Garden City Lands will continue to be owned by CLC and Musqueam as equal beneficial owners;
19. we anticipate (and it is reasonable to expect) that if any negotiations are proposed to be commenced among CLC, Musqueam and the City if the PSA is terminated by reason of the failure of the City to agree to extend the deadline date for satisfaction of the ALR Release Condition, **CLC and Musqueam will maintain the position that the same terms and conditions which were reflected in the PSA will be re-instated to (as stated in the MOU) "give effect to the spirit of the MOU"**; and
20. although the City has the discretion not to agree to extend the deadline date for satisfaction of the ALR Release Condition and to thereby cause the termination of the PSA, there are no provisions in the PSA nor in the MOU to entitle the City to obtain any greater interest in the Garden City Lands than to the extent and in the manner already expressly stipulated in the PSA.

I will be pleased to discuss any aspect of these matters with you at any time.

Yours truly,

Bull, Houser & Tupper LLP


Larry R. Sandrin

LRS/1801327.05/jj

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Richmond

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November 27, 2008

Mr. George Duncan
Chief Administrative Officer
The City of Richmond
6911 No. 3 Road
Richmond, BC
V6Y 2C1

Dear Mr. Duncan,

As you know, nine years ago (2000) Tourism Richmond, in partnership with the City of Richmond, put forward an application to receive the 2% Additional Hotel Room Tax, and we were successful. The long-term objective of the use of these funds was to increase the number of overnight visitors to our growing number of hotels.

The proposed catalyst to achieve this objective at that time was the possible development of a Trade & Exhibition Centre for Richmond (RTEC). As a part of that initiative, we conducted a number of studies on the development potential of such a Centre. We also developed a business and development plan that was contingent on receiving significant government grants. However, by June 14, 2007, we found that neither the B.C. government, nor the Federal government were in a position to provide the required level of financial support to assist Tourism Richmond develop the Centre. As a result, the Association went farther afield to explore possible private partnership interest in this initiative. To date, we have not been able to secure the needed financing from such sources. And subsequently, markets both locally and abroad have experienced significant and unprecedented economic challenges which have noticeably impacted tourism worldwide, further dimming the chances that such financing can be located.

Given the foregoing, the Association has been compelled to re-orient its business plan to find other approaches to increase the number of hotel room stays and enhance tourism in Richmond. So while our central objective remains the same, at this time and under the present circumstances, it is our considered opinion that the RTEC is no longer economically viable as a cost effective means of generating additional hotel room stays and tourism dollars for Richmond.

Therefore, I will be making a recommendation at our next Board meeting to withdraw our initiative to pursue the RTEC, and to continue to ramp up our re-oriented marketing plans: to develop a broader, more wide-ranging marketing and business development program that will achieve the same objective – an increase of 100,000 hotel room nights per year and the attending additional tourism spend that this will generate.

Every night a tourist stays in a hotel room in Richmond, approximately \$ 218 / night is generated for the local economy. Therefore, overall, the 100,000 nights would generate for the Richmond economy:

- an increase of \$12.2 million spent annually on accommodation and in-hotel spending over our average of \$120 million per year and,
- an increase of \$21.8 million per year in total spending by visitors – over our average of \$ 210 million per year spent in our local economy.

We believe our objective of 100,000 room nights is still a worthwhile, albeit ambitious, objective.

As you know, increasing hotel room nights is not the Association's only objective. Through our current marketing programs in Canada, the U.S, Europe and the Asia Pacific, we are encouraging visitors to consider Richmond as a primary destination for business, sport and pleasure. We fully understand that these visitations may not necessarily translate directly into hotel room nights for Richmond, but will most definitely contribute meaningfully to the local economy. To this end, we have appreciated the many opportunities to work with the City of Richmond on some of these programs, and look forward to continuing this productive relationship with the City through coordinating our respective tourism and business initiatives with each other.

Perhaps we can discuss our Association's enhanced marketing re-orientation with you in greater detail, in the not-too-distant future. In the meantime, should you have any questions about our decision to withdraw our pursuit of the Richmond Trade and Exhibition Centre, please let me know.

Sincerely,


for Chris Browne
President

cc. Kathryn Warren, Chair, Richmond Trade & Exhibition Committee
Tracy Lakeman, Executive Director

SCHEDULE 1 TO THE MINUTES OF
THE GENERAL PURPOSES
COMMITTEE MEETING OF MONDAY,
NOVEMBER 17, 2008.



CANADA LANDS COMPANY
SOCIÉTÉ IMMOBILIÈRE DU CANADA

Monday, November 17, 2008

Joe Erceg
General Manager, Planning & Development
City of Richmond
6911 No. 3 Road,
Richmond, BC V6Y 2C1

Dear Mr. Erceg:

Re: Garden City Lands – Distribution of Open Space

The following statement of clarification is pursuant to the recent discussions between us on the above subject

Further to the Agreement of Purchase and Sale dated December 22, 2005, Clause 4.5, the CLC/Musqueam "Joint Venture" provides the following clarification with respect to the intended distribution of parkland on the "Garden City Lands":

The overall configuration and layout of the "Public Lands" as defined under the terms of the Agreement, will be a major element of the master planning process and will be the subject of a Comprehensive Development Plan approval by the City of Richmond. In response to concerns that have been expressed regarding the potential for City parkland being "scattered" under the above referenced Agreement, CLC/Musqueam hereby advise that a minimum area of 40 acres (comparable in size to Minoru Park) and inclusive of the 15% of the site earmarked for the TEC, will be arranged in a consolidated area with appropriate dimensions for its program purposes to the sole satisfaction of the City of Richmond as the approving authority.

We trust this provides sufficient assurance at this time and have every faith in the quality of the overall plan for the Garden City Lands that will one day emerge from due process.

Yours truly,
CANADA LANDS COMPANY CLC LIMITED

Randy Fasan, MAIBC, MRAIC
Director, Urban Design & Planning

Copy: Ken McGregor – Musqueam Band Manager
Doug Kester – CLC VP Western Region

Filename: City of Richmond (RF) November 17, 2008

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Canada



General Purposes Committee

Date: Monday, November 17, 2008

Place: Anderson Room
Richmond City Hall

Present: Mayor Malcolm D. Brodie, Chair
Councillor Linda Barnes
Councillor Cynthia Chen
Councillor Derek Dang
Councillor Evelina Halsey-Brandt
Councillor Sue Halsey-Brandt
Councillor Rob Howard
Councillor Bill McNulty
Councillor Harold Steves

Call to Order: The Chair called the meeting to order at 4:00 p.m.

MINUTES

1. It was moved and seconded
That the minutes of the meeting of the General Purposes Committee held on Monday, October 20, 2008, be adopted as circulated.

CARRIED

BUSINESS & FINANCIAL SERVICES DEPARTMENT

2. **ROKAPA MANAGEMENT LTD., DOING BUSINESS AS WELL PUB
6511 BUSWELL STREET - RE-LOCATION OF LIQUOR PRIMARY
LICENCE**
(Report: October 15, 2008, File No.: 12-8275-30-032) (REDMS No. 2514674)

General Purposes Committee

Monday, November 17, 2008

Glen Jensen, owner of Legends Pub, accompanied by Ronnie Patterson, the applicant, and owner of Rokapa Management Limited, advised the Committee that the objective of the proposed application was to allow for a new Liquor Primary Licence operation by re-designating the existing 65 seat restaurant area (which currently has a Food Primary Liquor Licence) to a maximum 100 seat pub operation. The 115 seat 'Legends Pub' Liquor Primary Licence, at the same location would remain in operation.

In response to the area residents' concerns related to the possibility of increased noise resulting from the approval of this application, Mr. Jensen remarked that the level of noise was not anticipated to increase, rather it would likely remain the same as now. He also commented that many of the noise related issues were a result of a bus stop located outside of the establishment.

Mr. Patterson further advised that there was a possibility that the neighbourhood residents had misinterpreted the intent of the proposed application, as no additional seats or building modifications were being proposed, and the applicant was only seeking to remove 100 seats from the Food Primary Licensing designation for relocation to Liquor Primary Licensing designation.

In response to a query, Mr. Jensen provided clarification that the applicants' intention was to relocate an existing, non-operational Liquor Primary Licence from the location at 8220 Lansdowne Road to the Legends location at 6544 Buswell Street.

A discussion ensued, and in answer to several questions, Chief Licence Inspector, Amarjeet S. Rattan, provided the following advice:

- it was possible to extend Council's response timeline to the Provincial Liquor Control and Licensing Branch (LCLB) with regard to this application;
- although only ten letters were received from area residents in response to the application, one of the letters was from a Strata Management, representing 124 strata lots;
- in reference to the report about the proposed application, staff were permitted to include only written comments received from area residents, and information related to the phone calls received by City staff in association with the application did not form part of the report;
- staff would contact the RCMP to obtain official incident reports related to the Legends Pub for Committee members to review;
- the most recent reported incidents at the Pub included a patron who had smashed a bottle over a bouncer's head, as well as a large group of people smoking outside of the pub;

General Purposes Committee

Monday, November 17, 2008

- a Food Primary License allows a family restaurant operation, including service to children, under which patrons may order both food and alcoholic beverages, however, patrons may not order alcohol without ordering food; and
- a Liquor Primary License allows patrons to order alcohol without ordering food.

In answer to a question, the applicants advised that they were willing to keep the minimum number of seats allowed (12 seats), for the restaurant operation. As a result of the discussion, the following **referral** motion was introduced:

It was moved and seconded that

That the application by Rokapa Management Ltd. be referred to staff to (i) obtain further input and clarification from the applicants, as well as interested agencies, including the RCMP; and (ii) to discuss various options with the applicants, and report back to Committee prior to the expiration of any deadlines related to the current application to the Liquor Licensing Branch.

The question on the motion was not called, as further discussion took place about the confusion related to the proposed application. It was also noted that modifications to the original application may result in the applicant having to make a new submission.

The question on the motion was then called, and it was **CARRIED**.

3. BUSINESS LICENCE BYLAW NO. 7360, AMENDMENT BYLAW 8443

(Report: November 6, 2008, File No.: 12-8060-20-8443; XR-12-8060-20-7360) (REDMS No. 2514528)

It was moved and seconded

That Bylaw 8443, which amends Business Licence Bylaw 7360 to create revised fee schedules, be given first, second and third readings.

CARRIED

4. UBCM TOURISM FUNDING - PHASE II APPLICATION

(Report: November 7, 2008, File No.: 03-1087-01, XR: 08-4150-03-01) (REDMS No. 2525423)

It was moved and seconded

That the City of Richmond apply for Phase II funds in the amount of \$181,000 available through UBCM to implement the development of a comprehensive tourism marketing program in support of corporate and community strategies that will position Richmond as a tourism destination.

General Purposes Committee

Monday, November 17, 2008

Prior to the question on the motion being called, in answer to questions, the Manager of Economic Development, Neonila Lilova provided the following advice:

- Phase I of the UBCM Tourism Funding had been utilized to hire a team of consultants to develop a comprehensive Community Tourism and Sports Tourism Strategy;
- the request for Phase II of the funding was preceding the presentation of the Community Tourism and Sports Tourism Strategy due to time constraints, as the funding application deadline was November 30, 2008;
- the Community Tourism and Sports Tourism Strategy was anticipated to be forthcoming in January 2009; and
- the City would be leading the majority of the programs outlined in the Strategy, with the possibility of some participation from Tourism Richmond.

The question on the motion was then called, and it was **CARRIED**.

PLANNING AND DEVELOPMENT DEPARTMENT

5. **THE GARDEN CITY LANDS "BLOCK APPLICATION" FOR EXCLUSION FROM THE AGRICULTURAL LAND RESERVE – STATUS UPDATE**

(Report: November 12, 2008, File No.: AG 08-416748) (REDMS No. 2527527)

Joe Erceg, General Manager, Planning and Development, accompanied by Cecilia Achiam, Senior Program Manager, Policy Development, CPMG, advised that at a presentation made on behalf of the City, the Musqueam and the Canada Lands Company (CLC) to the Agricultural Land Commission (ALC) on August 14, 2008, a number of issues were raised by members of the ALC, and that this report responded to several of the issues.

Mr. Erceg further advised that:

- since the August 14, 2008 presentation, ALC staff had been contacting City staff regarding issues of concern;
- it was in the City's best interest to volunteer additional measures for further improvement and enhancement of agricultural viability;
- in order to enhance and advance programs and initiatives that would provide further benefits to agriculture, the City's partners (the Musqueam and the CLC) had volunteered additional funds over and above the endowment fund they had previously committed to; and
- the current Council had the choice to deal with the issue now, or to defer it to the new Council.

General Purposes Committee

Monday, November 17, 2008

Mr. Erceg then summarized the recommendations found in the report, indicating that Council's endorsement was sought for:

- (i) a six month extension to the Purchase and Sale Agreement (PSA), as it would expire on December 31, 2008;
- (ii) authorization for staff to advise the ALC about Council approved initiatives and programs to enhance agriculture;
- (iii) authorization to advise the ALC that the City was prepared to enter into an agreement such as a Memorandum of Understanding with the ALC to commit to the City's proposed initiatives.

Mr. Erceg further advised that there were no guarantees or assurances that the "Block Application" would receive approval from the ALC, even with the inclusion of the additional measures related to enhancement of agriculture. However, he advised that it was likely that the application would not be approved without the provisions for additional measures.

Reference was made to a letter written to the City by the CLC, in response to concerns associated with the proposed agreement and City parkland being "scattered" throughout the Garden City Lands. Mr. Erceg remarked that the letter confirmed the CLC and Musqueam's commitment to provide for a minimum area of 40 acres to be arranged in a continuous area appropriate for the City's program purposes. A copy of the letter is attached as Schedule 1 and forms part of these minutes.

A discussion then took place about:

- the general timing of the report, and the significance of the information contained in the report;
- the feasibility of deferring the report to a future General Purposes Committee meeting for consideration by the new Council;
- the risk associated with the City not securing ownership of half of the Garden City Lands site through the MOU and PSA, prior to pursuing additional ownership;
- the likelihood of the Musqueam Indian Band obtaining the Garden City Lands site by other means, in the event the proposed MOU was not successful;
- the option available to Council to re-designate the City's share of the Garden City Lands as Agricultural Land Reserve; and
- the option of postponing Council's deliberation on the matter until after a meeting has taken place with the two Members of Parliament (MPs) for Richmond.

General Purposes Committee

Monday, November 17, 2008

During the discussion, reference was made to a letter to the City from both Richmond Members of Parliament, Alice Wong and John Cummins, expressing their opposition to extending the date limit of the PSA, and their support for keeping the Garden City Lands in the ALR. A copy of the letter is attached as Schedule 2 and forms part of these minutes.

As a result of the discussion, the following motion was introduced:

It was moved and seconded

That the report (dated November 12, 2008, from the General Manager, Planning and Development) titled the Garden City Lands "Block Application" for exclusion from the Agricultural Land Reserve – Status Update be referred to a General Purposes Committee meeting to be held before the holiday break for consideration by the new Council.

Prior to the question on the motion being called, staff were requested to:

- provide copies of this report and other relevant reports to Councillors-elect Ken Johnston and Greg Halsey-Brandt;
- contact the two MPs for Richmond in order to set up a meeting with members of City Council regarding the Garden City Lands matter; and
- investigate whether the MPs were aware of any federal legislative process which may be used to return the Garden City Lands to the Crown as outlined in their letter (Schedule 2).

The question on the motion was then called, and it was **CARRIED**.


ADJOURNMENT

It was moved and seconded

That the meeting adjourn (5:43 p.m.).

CARRIED

Certified a true and correct copy of the Minutes of the meeting of the General Purposes Committee of the Council of the City of Richmond held on Monday, November 17, 2008.



Mayor Malcolm D. Brodie
Chair

Shanan Dhaliwal
Executive Assistant, City Clerk's Office



CANADA LANDS COMPANY
SOCIÉTÉ IMMOBILIÈRE DU CANADA

Monday, November 17, 2008

Joe Erceg
General Manager, Planning & Development
City of Richmond
6911 No. 3 Road,
Richmond, BC V6Y 2C1

Dear Mr. Erceg:

Re: Garden City Lands -- Distribution of Open Space

The following statement of clarification is pursuant to the recent discussions between us on the above subject

Further to the Agreement of Purchase and Sale dated December 22, 2005, Clause 4.5, the CLC/Musqueam "Joint Venture" provides the following clarification with respect to the intended distribution of parkland on the "Garden City Lands":

The overall configuration and layout of the "Public Lands" as defined under the terms of the Agreement, will be a major element of the master planning process and will be the subject of a Comprehensive Development Plan approval by the City of Richmond. In response to concerns that have been expressed regarding the potential for City parkland being "scattered" under the above referenced Agreement, CLC/Musqueam hereby advise that a minimum area of 40 acres (comparable in size to Minoru Park) and inclusive of the 15% of the site earmarked for the TEC, will be arranged in a consolidated area with appropriate dimensions for its program purposes to the sole satisfaction of the City of Richmond as the approving authority.

We trust this provides sufficient assurance at this time and have every faith in the quality of the overall plan for the Garden City Lands that will one day emerge from due process.

Yours truly,
CANADA LANDS COMPANY CLC LIMITED

Randy Fasan, MAIBC, MRAIC
Director, Urban Design & Planning

Copy: Ken McGregor -- Musqueam Band Manager
Doug Kester -- CLC VP Western Region

Filename: City of Richmond (RF) November 17, 2008

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Canada



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November 17, 2008

Mayor and Council
City of Richmond
6911 No. 3 Road
Richmond, B.C.
V6Y 2C1

Dear Mayor and Council;

**Re: THE GARDEN CITY LANDS "BLOCK APPLICATION" FOR EXCLUSION
FROM THE AGRICULTURAL LAND RESERVE**

We are writing concerning the item on the agenda for Council's General Purposes Committee meeting today pertaining to a staff recommendation to modify the Agreement of Purchase and Sale for the Garden City Lands to extend the date limit for satisfaction of the Agricultural Land Reserve (ALR) Release Condition from December 31, 2008 to June 30, 2009.

Please be advised that we are both opposed to this modification and the extension of the time limit to appeal to the Agricultural Land Commission (ALR). Overwhelmingly, our constituents have indicated that they do not support the terms of the Agreement of Purchase and Sale and the related Memorandum of Understanding and they wish these lands to remain in the ALR. We reflected this community view in the public position we took in the recent federal election campaign.

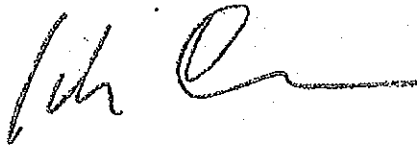
Accordingly, with the support of our constituents, it is our intention to work with the Minister responsible for Canada Lands to return the Garden City lands to the Crown so that plans may be made to secure the lands in perpetuity for the benefit of our constituents.

Therefore, we request that you not support this staff recommendation.

Yours truly,

ON BEHALF OF:
(Signature on file)

Alice Wong, M.P.
Richmond



John Cummins, M.P.
Delta-Richmond East