



Special General Purposes Committee

- Date: Monday, December 8, 2008
- Place: Anderson Room
Richmond City Hall
- Present: Mayor Malcolm D. Brodie, Chair
Councillor Linda Barnes
Councillor Derek Dang
Councillor Evelina Halsey-Brandt
Councillor Greg Halsey-Brandt
Councillor Sue Halsey-Brandt
Councillor Ken Johnston
Councillor Bill McNulty
Councillor Harold Steves
- Call to Order: The Chair called the meeting to order at 4:09 p.m.

PLANNING AND DEVELOPMENT DEPARTMENT

- 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**

(Report: December 5, 2008, File No.: 08-4105-20-AMANDA#08-416748, XR: 03-1000-14-117)
(REDMS No. 2537374, 2527527, 2533013, 2528195)

Joe Erceg, General Manager, Planning and Development, accompanied by Cecilia Achiam, Senior Program Manager, Policy Development, and Phyllis Carlyle, General Manager, Law & Community Safety, provided a brief overview of the status and historical background of the Garden City Lands "Block Application" for exclusion from the Agricultural Land Reserve (ALR).

Special General Purposes Committee

Monday, December 8th, 2008

Mr. Erceg indicated that staff were recommending an extension to the Purchase and Sales Agreement (PSA) for a six month period, as the Agricultural Land Commission (ALC) was expected to make a decision on the matter during that time. He also advised that in response to feedback from the ALC and its staff, recommendations were made for additional enhanced agricultural benefits in addition to an endowment fund, as well as further exploration of the following:

- improvement to the level of City enforcement within the ALR;
- provisions for additional drainage and irrigation measures;
- encouraging the consolidation of smaller agricultural lots;
- placing restrictions on the size and placement of houses and buildings permitted on properties in the ALR; and
- consideration of City implementation of various urban agricultural initiatives.

Mr. Erceg also indicated that City staff believed that (i) the supplementary measures related to agricultural enhancement would improve the approval chances of the “Block Application” by the ALC; and (ii) that execution of the PSA may be the only process which provided the City of Richmond with a portion of the Garden City Lands.

Mr. Erceg highlighted new information in connection to the matter, including: (i) a letter from the Treasury Board, indicating that there was no current action or process underway to return the Garden City Lands to the Crown; and (ii) correspondence received from Bull, Housser & Tupper, providing details related to the Joint Venture Agreement (JVA) between the CLC and the Musqueam. The correspondence confirmed that (i) the JVA would remain in effect in the event that the PSA was not fully executed; (ii) the CLC would continue to hold an undivided 50% interest in the Lands for the Musqueam; and (iii) that any transfer of the lands to another party would require the consent of the Musqueam. A copy of the Bull, Housser & Tupper submission is attached as Schedule 1, and forms part of these minutes.

A discussion then took place about:

- the Musqueam’s right to challenge municipal and provincial regulation, and their agreement to abide by City regulations for the purposes of seeing the PSA / MOU process through;
- the possibility of the ALC granting approval of the “Block Application” with additional enhancements;
- the feasibility of the City implementing its own agricultural initiatives similar to those proposed through the Garden City Lands process, and the required resources; and

Special General Purposes Committee

Monday, December 8th, 2008

- the impact associated with the elimination of the Trade and Exhibition Centre (TEC) development;

Councillor Barnes left the meeting at 4:30 p.m..

Jim Wright, 8300 Osgoode Drive, spoke in opposition to extending the date for the PSA, stating that Richmond had fulfilled its obligations under the PSA. Mr. Wright expressed that in his opinion the right thing for Richmond to do would be to re-negotiate with its partners and/or seek arbitration on the matter. He concluded by remarking that members of Council had legislative discretion to vote as they felt was right, and that it was wrong to suggest that there was an obligation to vote in a certain manner. A copy of Mr. Wright's submission is attached as Schedule 2, and forms part of these minutes.

Councillor Barnes re-entered the meeting at 4:34 p.m..

A discussion ensued between the delegation and Committee members about the general interpretation of the terms "fettered", and "breach of trust" in relation to the PSA, MOU and the "Block Application".

Representing the Richmond Sports Council, Jim Lammond and Roger Barnes, spoke in support of City Council's attempts to acquire the Garden City Lands. They provided a brief history of the Sports Council's aspirations to acquire the site for the purposes of fulfilling the community needs of the citizens of Richmond as well as the sports community.

Jim Reynolds, General Legal Counsel for the Musqueam, clarified that a decision by City Council against the extension of the PSA would not result in a "breach of trust". He advised that the Musqueam had not been approached by Richmond Members of Parliament about the possibility of transferring the Garden City Lands, and that the Chief Campbell of the Musqueam Indian Band had stated that the Musqueam had no intention of transferring the Lands. Mr. Reynolds concluded by providing comments on several points related to the MOU. A copy of Mr. Reynolds' submission is attached as Schedule 3 and forms part of these minutes.

In answer to a question about whether the Musqueam could make decisions related to the Garden City Lands without the involvement of the CLC, Mr. Reynolds advised that there were provisions set out between the two parties in the JVA, however, the JVA was a private agreement between the CLC and Musqueam, and did not concern the municipality or the residents of Richmond.

Carmela May Clair, 6651 Lynas Lane, spoke in opposition to extending the PSA, and provided a historical perspective on the similarities between Sea Island and the Garden City Lands. She expressed concerns related to the increasing price of flour and food generally, and stated that the Musqueam, and the CLC had a global responsibility to use the Garden City Lands site in the best way, which in her opinion was for the purpose of growing food.

Special General Purposes Committee

Monday, December 8th, 2008

Olga Tkatcheva, 8-7680 Gilbert Road, spoke in opposition to extending the PSA, and made reference to the Urban Future Studies, which was based on statistical data from the 2001 Census. She then spoke about the changes in housing requirements, and suggested that according to the predictions based on statistical data presented in the 2006 Census, the requirements for housing would decrease. A copy of Ms. Tkatcheva's submission is attached as Schedule 4 and forms part of these minutes.

Lorraine Bell, 10431 Mortfield Road, expressed that in her opinion if the Garden City Lands were fully acquired by the Musqueam, their planning and development concepts would not be any worse than the City's.

Carol Day, 11631 Seahurst Road, spoke in opposition to extending the PSA. She made reference to the report dated November 12th, 2008, regarding the Garden City Lands "Block Application" for Exclusion from the ALR – Status Update, and expressed concerns relating to (i) to the term "pilot project"; (ii) lot consolidation; (iii) leases for unconstructed roads; (iv) registering a covenant on title; (v) new road construction; (vi) new salary costs; (vii) discouragement of uses other than bona fide agricultural uses; (viii) proposed maximum house sizes; (ix) ancillary uses; and (x) the impact on Richmond residents resulting from additional measures taken in order to enhance the approval of the "Block Application". A copy of Ms. Day's submission is attached as Schedule 5 and forms part of these minutes.

Howard Jampolsky, 5531 Cantrell Road, remarked that the Garden City Lands was one of the major issues discussed during the 2008 municipal election campaign. He expressed that it was his understanding that the majority of Richmond residents were not in support of removing the lands from the ALR. Mr. Jampolsky identified the risks associated with (i) securing half of the Garden City Lands site for the City; and (ii) trying to ascertain the entire site. In conclusion, he encouraged City Council to take on the risks associated with ascertaining the entire Garden City Lands site.

Roeland Hoegler, 6560 No. 4 Road, expressed concerns related to the report regarding the Garden City Lands "Block Application" for Exclusion from the ALR – Status Update, and in particular about an absence of an economic breakdown regarding property value differences between large and small ALR lot parcels showing that larger consolidated lots had a lower per acre value than smaller lots. Mr. Hoegler also spoke about back land properties in the McLellan area; the necessity of additional Bylaw Enforcement staff; First Nations rights; and communications that he had himself had with ALC staff.

Susan Match, 6651 Minoru Blvd, asked City Council to be mindful of the needs of residents in the City Centre area who were older, and on a limited income, as well as women with families, and those who could not afford vehicles or single-family homes. She remarked that making a decision about the Garden City Lands would be difficult due to the complexities associated with the matter.

Special General Purposes Committee

Monday, December 8th, 2008

Arzeena Hamir, 8480 Dayton Court, Food Security Coordinator for the Richmond Food Security Task Force, spoke about Richmond's significant issues related to the future of food security. She advised that the province had land shortages of approximately 100,000 hectares in terms of meeting food security needs. Ms. Hamir also spoke about ongoing climate changes and the associated impact on current food exporters such as California and Mexico. She concluded by advising that as an Agrologist, she had not identified issues related to soil conditions that would prevent the site from being used for the purposes of food production.

Councillor Johnston left the meeting at 5:42 p.m..

Nancy Trant, 10100 No. 3 Road, provided her perspective on the Garden City Lands matter, stating that due to global issues including global warming, major food wars were predicted to take place in the future, therefore the right use for the Garden City Lands would be for growing food.

Councillor Johnston re-entered the meeting at 5:44 p.m..

It was moved and seconded

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 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***
- (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 the November 12th, 2008 report as part of the "Block Application".***

The question on the motion was not called, as Committee members shared their views in support of and in opposition to approving an extension to the PSA. As a result of the Committee's discussion, the following **referral** motion was introduced:

Special General Purposes Committee

Monday, December 8th, 2008

It was moved and seconded

That the matter be referred back to staff with directions to facilitate further negotiations of the Memorandum of Understanding with the CLC, ALC, and the Musqueam in order to attempt to negotiate a better deal.

The question on the motion was not called as discussion took place about the implications associated with the referral motion. It was noted that the referral motion would send the City's partners a positive message indicating the City's interest and intentions in continuing negotiations.

The question on the referral motion was then called, and it was **DEFEATED** with Cllrs. Barnes, Dang, E. Halsey-Brandt, S. Halsey-Brandt, Johnston, McNulty, and Steves opposed.

Prior to the question on the main motion being called, the request was made that Part (1) of the motion be dealt with separately.

The question on Part (1) of the main motion was then called, and it was **DEFEATED** with Cllrs. Barnes, Dang, S. Halsey-Brandt, Johnston, McNulty, and Steves opposed.

The question on Parts (2) and (3) of the main motion was then called, and it was **DEFEATED** with Mayor Brodie, and Cllrs. Barnes, Dang, E. Halsey Brandt, G. Halsey-Brandt, S. Halsey-Brandt, Johnston, McNulty, and Steves opposed.

Discussion continued, during which staff advised that the Musqueam were under no obligation to reach a new agreement with the City. Comments were made about the importance of continued discussions with the Musqueam and CLC, and the following **motion** was introduced:

It was moved and seconded

That Council enter into discussions with its partners – the CLC and the Musqueam - after City Council formulates its position, in order to discuss the future of the Garden City Lands.

The question on the motion was not called, as a request was made of staff to review Mr. Reynolds' submission and provide comments.

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

ADJOURNMENT

It was moved and seconded

That the meeting adjourn (6:45 p.m.).

CARRIED

Special General Purposes Committee

Monday, December 8th, 2008

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, December 8th, 2008.

Mayor Malcolm D. Brodie
Chair

Shanan Dhaliwal
Executive Assistant, City Clerk's Office

SCHEDULE 1 TO THE MINUTES OF
THE SPECIAL GENERAL PURPOSES
COMMITTEE MEETING OF MONDAY,
DECEMBER 8, 2008.



**Bull, Housser
& Tupper LLP**

3000 Royal Centre, PO Box 11130
1055 West Georgia Street
Vancouver, BC, Canada V6E 3R3
Phone 604.687.6575 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:	03-3572
Date:	December 8, 2008

BY EMAIL AND DELIVERED BY HAND

City of Richmond
6911 No 3 Road
Richmond, BC V6Y 2C1

Attention: Phyllis L. Carlyle, General Manager Law and Community Safety

Dear Ms. Carlyle:

**Re: Garden City Lands – Confirmation of Declaration of Trust by Canada Lands
Company CLC Limited ("CLC") in favour of Musqueam Indian Band**

We understand that a question remains in the minds of some members of Richmond City Council as to whether CLC holds an undivided 50% beneficial interest in the Garden City Lands in trust for Musqueam. This has been the subject of a number of submissions made to the City by CLC and Musqueam, both in writing and in oral presentations before City Council.

Nonetheless, as solicitors for CLC, we again confirm that, effective upon the transfer of the Garden City Lands from Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans ("DFO"), to implement the express terms of the MOU, CLC declared that it holds and will continue to hold registered title to the Lands as bare trustee for and on behalf of Musqueam's designated Limited Partnership and CLC, as Joint Venture partners.

As additional confirmation, we attach pages 1, 14, 15 and a redacted portion of page 16 of the Joint Venture Agreement (the "JVA") between Garden City Ventures Limited Partnership, CLC and Musqueam. The "Effective Date" of the JVA was the date upon which the Garden City Lands were transferred by DFO to CLC.

You will note that Section 2.1 of the JVA sets out the direction of Musqueam to CLC that any and all beneficial interests in the Lands contemplated in the MOU to be transferred to Musqueam will, as of the Effective Date, be held by CLC on behalf of and for the benefit of (Musqueam's) Limited Partnership.

2



Bull, Housser
& Tupper LLP

Section 3.1 of the JVA contains the express declaration of trust by CLC that it holds the registered title to the Lands in trust for the Limited Partnership and CLC, each as to an undivided and unregistered 50% beneficial interest.

Section 3.2 of the JVA sets out express covenants by CLC not to encumber, transfer or otherwise dispose of any of the Lands except as expressly set out therein. The possible circumstances of transfer include the transfer of the Public Lands to the City of Richmond pursuant to the Richmond-CLC/Musqueam Purchase Agreement, the dedication of portions of the Lands as public roads in accordance with any Subdivision Plan Approved by the Joint Ventures, and as otherwise Approved by the Joint Ventures from time to time.

We trust that the attached pages of the JVA clarify and confirm, yet again, the existing undivided 50% beneficial ownership in the Garden City Lands held by CLC in trust for Musqueam's designated Limited Partnership.

We reiterate that Recital D on page 2 of the Richmond-CLC/Musqueam Purchase Agreement already expressly acknowledged the beneficial ownership of the Limited Partnership in the Garden City Lands with the consent and at the direction of Musqueam.

We reiterate as well that the attached pages of the JVA are provided to the City as a courtesy with the consent of Musqueam for the purposes of answering any questions which may have arisen requiring proof of the establishment of the declaration of trust delivered by CLC for the benefit of Musqueam's Limited Partnership as contemplated in the MOU. The JVA is a private agreement between CLC and Musqueam, and its designated Limited Partnership and will not otherwise be disclosed unless both CLC and Musqueam expressly agree.

Yours truly,

Bull, Housser & Tupper LLP



Larry R. Sandrin

LRS/1807756/j

Copy to Canada Lands CLC Limited Attention: Mr. Doug Caster
Musqueam Indian Band Attention: Chief Ernie Campbell
Musqueam Indian Band Attention: Mr. Jim Reynolds
Attachments pages 1, 14, 15 and 16 (partially redacted) of Joint Venture Agreement

**GARDEN CITY LANDS, RICHMOND, BRITISH COLUMBIA
JOINT VENTURE AGREEMENT**

THIS AGREEMENT, dated with effect as of the Effective Date,
BETWEEN:

GARDEN CITY VENTURES LIMITED PARTNERSHIP, a
British Columbia limited partnership, having an office at
6735 Salish Drive, Vancouver, British Columbia, V6N 4C4
(the "Limited Partnership")

AND:

CANADA LANDS COMPANY CLC LIMITED, a company
duly incorporated under the laws of Canada, having a
business address at Suite 2000, 666 Burrard Street,
Vancouver, British Columbia, V6C 2X8
("CLC")

AND:

MUSQUEAM INDIAN BAND, having a business address
at 6735 Salish Drive, Vancouver, British Columbia,
V6N 4C4
("Musqueam")

WITNESSES THAT WHEREAS:

- A. Terms employed in these Recitals and defined in this Agreement will have the meanings respectively ascribed thereto in Section 1.1 of this Agreement;
- B. Pursuant to the MOU, CLC and Musqueam have agreed, *inter alia*, to form a joint venture for the purposes of the Project;
- C. Musqueam intends that its beneficial interests in the Lands (as contemplated in the MOU to be acquired by Musqueam upon transfer of the Lands from DFO to CLC) be held by the Limited Partnership as the nominee of Musqueam;
- D. The Limited Partnership is a British Columbia limited partnership, of which Garden City Ventures Limited is the general partner and 0742052 B.C. Ltd. is a limited partner;

4

14

1.6 Legislation

In this Agreement any reference to legislation includes a reference to the legislation and to any regulations made under that legislation as that legislation or those regulations may be amended or re enacted from time to time.

1.7 Number and Gender

Whenever the singular or masculine or neuter is used in this Agreement it will be construed to mean the plural or feminine or body corporate where the context of this Agreement requires it.

ARTICLE 2 MUSQUEAM DIRECTION AND CONSENTS

2.1 Musqueam Direction

Musqueam confirms its approval and irrevocable direction to CLC that any and all beneficial interests in and to the Lands contemplated in the MOU to be transferred to Musqueam will, as of the Effective Date, be held by CLC on behalf of and for the benefit of the Limited Partnership.

2.2 Musqueam Representations and Warranties

Musqueam represents and warrants to CLC and acknowledges and agrees as follows:

- (a) CLC will be entitled, in its separate capacities as trustee pursuant to Section 3.1 of this Agreement, as Joint Venturer under this Agreement and as Project Manager pursuant to the Project Management Agreement, to obtain directions and authority from Musqueam's Appointees in connection with the Project without any requirement for further authorizations or approvals from Musqueam; and
- (b) no approvals, consents or other authorizations will be required from Musqueam as to any matters relating to the Lands under or in connection with the *Indian Act* or the *First Nations Land Management Act* except in respect of lands which may be transferred by CLC to Musqueam as "Musqueam Lands" as contemplated in Section 11.1 of this Agreement.

2.3 Limitation on Liabilities of Musqueam

Musqueam will have no liabilities under this Agreement or in connection with the Lands except in respect of Musqueam's representations, warranties and acknowledgments set out in Sections 2.1 and 2.2 of this Agreement.

5

15

**ARTICLE 3
CLC DECLARATION OF TRUST**

3.1 Declaration of Trust by CLC in favour of Joint Venturers

CLC hereby declares that immediately upon receipt of registered title to the Lands pursuant to the DFO-CLC Purchase Agreement, CLC holds and will continue to hold registered title to the Lands as bare trustee for and on behalf of:

- (a) the Limited Partnership as to an undivided and 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 Partnership and CLC in the Lands in all its dealings with the Lands, including in the exercise of any discretion or the taking of any action by CLC under the Richmond-CLC/Musqueam Purchase Agreement; and
- (d) without duplicating any obligations of the Project Manager, CLC will, in its capacity as trustee hereunder, keep the Joint Venturers fully informed, as may be reasonable in any relevant circumstances, of any dealings or proposed actions of CLC, in its capacity as trustee.

3.2 CLC Covenant not to Encumber or Transfer the Lands

In furtherance of the Declaration of Trust set out in Section 3.1 of this Agreement, CLC covenants and agrees, in its capacity as trustee of the beneficial interests of the Limited Partnership in the Lands, CLC will not encumber, transfer or otherwise dispose of any of the Lands except:

- (a) as to the transfer of Public Lands in accordance with the terms and conditions of the Richmond-CLC/Musqueam Purchase Agreement;
- (b) for the purposes of transfer of portions of the Development Lands to Musqueam as Musqueam Lands as contemplated in Section 11.1 of this Agreement;
- (c) for the purposes of granting security in respect of Third Party Financing as Approved by the Joint Venturers;
- (d) for the purposes of dedication of portions of the Lands as public roads in accordance with any Subdivision Plan Approved by the Joint Venturers;
or

LRS/1307345.07

6

16

- (e) as otherwise Approved by the Joint Venturers from time to time, including, without limitation, through implementation of any Approved Annual Business Plan.

REDACTED FOR PRIVILEGE

LRS/1307346.07

Jim Wright, 8300 Osgoode Drive, Richmond

Mayor Brodie and councillors,

In this presentation, I will try to clear up the remnants of the straw men that have been set up and then blasted to smithereens in the staff report attachments.

First, the letter from our two members of parliament states two things:

- (1) They oppose modifying the existing agreements to extend the ALR-exclusion time limit.
- (2) They are committed to helping enable the lands to be returned to the federal government for the benefit of their constituents.

The letter from our MPs does NOT threaten a Musqueam interest or anything else. In fact, the offer could easily help the Musqueam to **succeed**. The Musqueam injunction efforts blocked the federal government's sale of the property to CLC in 2004, and the Musqueam have expressed an interest in restoring the injunction. That could lead to the federal government having to find ways to take back direct ownership. A federal program need would be required, and the MPs could help get that in place. Mr. Cummins has already taken effective steps as a service to his constituents.

The people of Richmond are tremendously fortunate to have two MPs who are so committed to helping. Let's **all** work **WITH** them.

Second, Richmond has already fulfilled **ALL** of its obligations under the agreement of purchase and sale and gone far **beyond** them to help CLC-Musqueam to succeed. We do not deserve to have our honour questioned by the CLC lawyer. We do **not** deserve to be expected to shut up and do what we're told.

(continued on other side)

(continued from other side)

We **do** have ongoing obligations under the **MOU**, particularly Sections 1(22), 1(23), and 2(1) of the MOU. The CLC lawyer has invoked them, and I hope that the City will follow his lead. The right thing to do is to follow those provisions for **renegotiation**—and perhaps arbitration and restoration—to the fullest extent possible.

We are engaged in the renegotiation part right now. But Richmond council was not even consulted. And then you're asked for hasty acceptance of a done deal with two votes in one day. I encourage you to vote **NO** today and then insist on your right to **direct** the City's renegotiating position.

Third, Council is either fettered or not fettered in its voting on this issue. If the agreements bound council to vote a certain way, it would be fettered. That is illegal, and the agreements could be thrown out. However, council is actually not fettered. In other words, the members do have legislative discretion to vote for what's right. The consequence of voting **No** is that CLC-Musqueam won't get their wish for a particular **new** agreement that is bad for the people of Richmond. There is no breach of anything.

Fourth, the offers that you have been asked to make to the Agricultural Land Commission in return for approval of the ALR-exclusion would cause a lot of collateral damage.

I'll be happy to add details if you have questions.

In conclusion, City staff have indicated that the Garden City Lands ALR-exclusion application has "very little chance" of approval. You are most certainly **not** required to take extraordinary measures to keep it on life support for another six months. Please, let it expire with dignity.

SPEAKING NOTES

MEETING OF RICHMOND GENERAL PURPOSES COMMITTEE AND COUNCIL – DECEMBER 8, 2008

Jim Reynolds, General Counsel, Musqueam Indian Band

You have some material from me and from the law firm of Blakes included as Attachment 6 at pages 26 to 37 of the Staff Report before you this afternoon.¹ I do not intend to take up much of your time as I know it is limited. Also, that material largely sets out the Band's legal position on the Garden City matter. It is supplemented by the letter from Mr. Sandrin, the solicitor for Canada Lands, attached as part of Attachment 7 to the Staff Report. In addition, I spoke to Council in March at the time of the public hearing on the ALR application and anyone interested can review the Transcript of that hearing available on the website of the Commission.²

My points today are very simple and can be summarized by saying that Musqueam has every confidence:

- (1) that Richmond will honour the contracts that it has entered into and, especially the obligation in the Memorandum of Understanding to negotiate in good faith and cooperatively to give effect to that MOU; and
- (2) that Richmond will also respect a trust of which it has knowledge, namely the trust of Musqueam's 50 % undivided fee simple or freehold interest in all of the Garden City Lands and will not encourage any breach of trust by any person including the Federal Government.

Dealing with the contract point, I would like to make the following comments:

- (1) the Memorandum of Understanding dated March 18, 2005 is a legally binding contract and will remain binding on Richmond and the other parties including the Federal Government even if the City allows the current Purchase Agreement to elapse at the end of the year;
- (2) the MOU cannot be terminated unilaterally by Richmond or the Federal Government although, as Mr. Sandrin explains in his letter, Canada Lands

¹ http://www.richmond.ca/cityhall/council/agendas/gp/2008/120808_agenda.htm

² http://www.alc.gov.bc.ca/application_Status/38099/from_Richmond/Transcripts/Transcripts_Day1.pdf

and Musqueam may have the option to do so if the understandings cannot be fulfilled³;

- (3) the parties (including Richmond) agreed that, before there can be any termination by Musqueam and Canada Lands of the MOU, Richmond will meet with Musqueam and Canada Lands 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"⁴;
- (4) the parties also agreed in the MOU to work "cooperatively and in good faith and [negotiate] whatever other agreements, arrangements and undertakings are required, to give effect to these understandings"⁵;
- (5) all parties agreed in the Purchase Agreement to "employ their respective commercially-reasonable efforts to expedite and complete the development approval processes described in [the] Agreement"⁶;
- (6) if the current Agreement expires, Musqueam has every confidence that Richmond will honour its contractual obligation to negotiate in good faith, cooperatively and in a commercially reasonable manner and enter into any required documents;
- (7) The new documents may include a Purchase Agreement having substantially similar terms although it should be noted that it largely protects the interests of the City rather than Canada Lands or Musqueam so the failure to do so is more of a problem for the City.

In summary, given the requirement of the MOU to work cooperatively and negotiate in good faith other agreement to give effect to the understandings of the MOU, there seems little practical point in Richmond not extending the current Purchase Agreement since, after further expense to all parties, it will likely only lead to a substantially similar Purchase Agreement.

On the trust issue, I refer you to the letters attached as part of Attachment 6 from Blakes and myself and to the Transcript of the Public Hearing. To summarize:

- (1) Musqueam has an undivided freehold or fee simple interest in every inch of the Lands equivalent to that of Canada Lands and the interest is held in trust on its behalf by Canada Lands;

³ See paragraphs 1(22) and 1(23) of the MOU.

⁴ *Ibid.*

⁵ Paragraph 1(1).

⁶ Section 3.2.

- (2) Any talk of a transfer of the Lands to the Federal Government or Richmond without Musqueam's consent is irresponsible and breaches the most basic principles of law. Musqueam is confident that the City will have nothing to do with such suggestions.

On the ownership issue, I would like to quote the City's external counsel, Mr. Keith Clark, at the public hearing in March:

"What the Musqueam have said and what CLC have confirmed is that the Musqueam currently enjoy a 50 per cent interest in the land and, as Mr. Reynolds, pointed out, the interest that they have is actually identical to the interest that I hold in my own house. My wife is the registered holder of my house. I am, because of a trust arrangement, the 50 per cent owner. The Musqueam are 50 per cent owners in a very real and recognizable way in the lands that are the subject of this discussion."⁷

Despite my letter to the Council of March 6 contained as part of Attachment 6, some people still talk about somehow transferring the Lands to the Federal Government without the Band's consent. I would like to quote from the opinion of the law firm of Blakes contained as part of Attachment 6 to the Staff Report:

"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 Joint Venture Agreement 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. ;... 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 proposed transfer."

In summary, unless and until Musqueam has given its consent, the talk of a transfer of any Lands to anyone, including the Federal Government is misleading and irresponsible and Musqueam is confident that the City will reject such nonsense.

⁷ *Supra* note 2 at page 140.

Hello, my name is Olga Tkatcheva, 8-7680 Gilbert rd Richmond BC

I want to offer my congratulations to the members of council that were reelected and newly elected. I was very pleased to see that some of the council members have provided an example for the community demonstrating that people's voices are heard and their opinion is counted and taken into consideration. The ability to change a position according to an ever changing world is a very valuable asset of the politician when it comes from the genuine desire to be a real representative of the people and ability to learn.

I want to inform the council about some new statistical data for our community that recently became available and from my point of view can changes your view about what is the community benefit now for Richmond comparing to a few years ago.

In a short version, the Urban Futures study was based on a statistical data from the Census 2001 but when Census 2006 data became available, the prediction of growth has been downgraded by more then 12,000 people by year 2011 and the difference will increase exponentially as the time goes.

I suggest that there is no community needs for the housing development on the Garden City Lands and other competing community needs for these lands have to be taken into the closer consideration, as their ability to fulfill the need for the park or the teaching field and community gardens that might be allowed under the ALC compatible uses within the walking distance from the high to medium density housing developments in the neighborhood.

I ask the council not to prolong the current PSA agreement and continue to negotiate under the MOU for the future with no housing development on the Garden City Lands,

The longer version with the tables is on the next pages,

With best regards,

Olga Tkatcheva.

**Review of the “Projecting Community Change in the Richmond City Centre—
A Community Lifecycle Approach,” Urban Futures study**

The Urban Futures study is based on expired data and it greatly overestimates the need for the new housing developments in Richmond.

The study was accepted by the Richmond Council on July 9, 2007, and edited last time AUGUST 14, 2007. They state that a General Methodological Approach - the Community Lifecycle Model - commences with data from the 2001 Census describing the community's existing housing stock and the demographic characteristics of its occupants for years between 1996 and 2001 and with the residential permit data from 2001 to 2006 from the City of Richmond Planning Department.

But even before the study was finished, beginning March 13, 2007, the raw 2006 Census data became available, and it was found that the tendency of the rather faster population growth did not prove to be of a long duration and that the projections that were done using the 2001 Census data did not prove to be correct by the 2006 Census.

There was overestimation that needed to be corrected. BC STATS, Service BC, BC Ministry of Labour and Citizens' Services, revised its previous population estimates and projections with the note that “Population estimates for 2002 to 2006 have been revised (March 2008) to align with the 2006 Census age/sex population counts”.

Urban Futures study states that they did some editing on Aug. 14, 2007, but they apparently failed to make the corresponding adjustment and did not use the new data that was available by then. In result, since their study used incorrect data, it caused the overestimation in all targeted parameters and provided a wrong guidance for the council in its estimation of the need for the housing in Richmond.

They assume that “We are in a period of faster growth since ~2003 that is projected to continue for another 10 years” (page 46).

This assumption was proven to be wrong very soon – in year 2006 the GVRD growth was 1.51%, and then in 2007 it fell to 1.27 %. Analyzing the new trend, BC STATS changed their projection. Their new estimation is a yearly growth about 1.5-1.7 % for GVRD and around 1.4% for Richmond (up to year 2018).

It means that the Figure 9 on the page 18 of the Urban Futures study with the projected jump in growth between years 2006 and 2016 up to 3% is false.

I used the corrected data from the BC Stats to calculate the % of the yearly growth for GVRD and Richmond and you can see on the next page that there is nothing in a 2-3% range.

Based on data from <http://www.bcstats.gov.bc.ca/data/pop/popstart.asp>, unadjusted data caused the following overestimation for GVRD and Richmond:

Table 3. Population projection for the GVRD in 2031

source	people
BC STATS	3,151,271
Urban Futures (figure 9)	3,227,482
overestimation	76,211

For municipality of Richmond, Urban Futures did not provide any clear estimation outside of the year 2011 (appendix 4 of the Urban Futures study) so I can only calculate their error for up to that year.

Table 4. Population projection for Richmond in 2011

source	people
BC STATS	197,504
Urban Futures (appendix 4)	210,000
overestimation	12,496

The overestimation is 6.3%.

(Source: Population estimates (1986-2007) and projections (2008-2036) by BC STATS, Service BC, BC Ministry of Labour and Citizens' Services.)

Even by the year 2011, Urban Futures are over by 12,496 people in the projected growth. This number is as great as the projected population of the Garden City Lands, so at least by the simple correction these lands can be spared from undesirable development.

Recent changes in the immigration

The tendency of a lower rather than a faster growth is also supported by the data of the immigration to BC in the recent year. According to data from the Immigration Highlights Fourth Quarter 2007, the immigration to BC is on the decline for the third consecutive year:

Based on data of the Citizenship and Immigration Canada, published by the BCStats in the May 2008 Issue: 07-4i, mm074.pdf:

Table 5: Immigrant Landings by Class - British Columbia –

Year	people
2005	44771
2006	42083
2007	38893

The second trend in immigration is specific for Richmond with the increase in the % of the people of the older age arriving to join their earlier settled families when Chinese families sponsor their parents. There was only 6,2 % increase in the total population of Richmond in 5 years since Census 2001 with the modest medium yearly growth of only 1.24 %, but we had much more bigger increase in the specific age group of the people older then 45 years. There were 62890 people according to the Census 2001 and their number increased up to 74245 acc. to the Census 2006 with the 18 % growth in this age-specific growth. These are the people that do not need the high-rise apartments as traditionally Chinese families do not invite their parents to Canada to settle them alone, they live as a Multi-family households, and it is reflected in the 21 % of the growth in the Multi-family households in Richmond since the last Census. Plans to increase the number of the high-rises are not supported by this current trend in statistics, specific for

Richmond. There is also no rationale to attract the younger people from outside of Richmond to settle here because according to the same Urban Futures study when the population is expected to triple, the number of Job is expected to double so there is a shortage of jobs for the work force age and it contradicts to the Smart Growth BC principals.

Latest real estate market stagnation

The real estate market has already reacted to the apparent overestimation of the population growth and resulting overdevelopment and excessive starts of housing development. Currently, the supply exceeds the demand on the real estate market, with more then 20 high rise buildings in Richmond in stage of completion and about the same number in already approved plans on the land adjacent to the Olympic oval.

According to a latest Real Estate Board of Greater Vancouver (REBGV) release on July 3, 2008 –

*Increased property listings and moderating home prices have eased the Greater Vancouver housing market into a buyer's phase. The Real Estate Board of Greater Vancouver (REBGV) reports that **residential property sales in Greater Vancouver declined 42.9 per cent in June 2008 to 2,425 from the 4,244 sales recorded in June 2007.***

New listings for detached, attached and apartment properties increased 18.3 per cent to 6,546 in June 2008 compared to June 2007, when 5,533 new units were listed.

This is an expert opinion of Alex Carrick from the Reed construction data, June 25, 2008:

New-Housing Equilibrium and What This Means for Home Prices

*Over the past six years, 2002 through 2007, **total housing starts have averaged to "heavy"** and expect a period of adjustment ahead. Examples of negatives in the marketplace include: high gasoline prices and a riskier jobs outlook are making everyone more cautious about spending plans; **home builders are facing higher levels of unsold inventories; demographic shifts to the West have slowed down; and existing home sales have dropped so far this year.** On the latter point, the Canadian Real Estate Association is expecting unit-sales of existing homes to decline 11.5% in 2008 on a year-over-year basis, after increasing 7.6% in 2007.*

For the same time, Urban Futures study uses data from the 2001-2006 housing starts for the extrapolation and makes far from correct prediction for the higher-than-needed housing starts.

Conclusion

In my opinion, the "Projecting Community Change in the Richmond City Centre—A Community Lifecycle Approach," Urban Futures study is generally of a low prognostic significance. It makes a very long term prognosis based on very short term data in times of unstable tendencies that are not useful for extrapolation. Its resulting numbers are incorrect, as it uses expired data and needs to be adjusted according to the latest population estimates (1986-2007) and projections (2007-2036) by BC STATS, Service BC, BC Ministry of Labour and Citizens' Services (August 2007, Population estimates have been revised March 2008). I suggest that there is no community needs for the housing development on the Garden City Lands and other competing community needs for these lands have to be taken into the closer consideration, as their ability to fulfill the need for the park or the teaching field and community gardens that might be allowed under the ALC compatible uses within the walking distance from the high to medium density housing developments in the neighborhood.

Olga Tkatcheva, MSc in the Quality assurance and statistics.

Minimize effects of small lots on agriculture Nov 17th, 2008

I am opposed to extending the ALR release condition for the Garden City lands. It has already been extended twice under the purchase agreement. The limit for extensions under the agreement has been reached, and an extension that goes beyond the limit is *not* acceptable.

Re the Garden City Lands status update from Joe Erceg dated Nov 12th, 2008:

In the update, I feel that section 3, "Minimize effects of small lots on Agriculture," is a ridiculous plan. The owners of the lots bordered by Westminster Highway, No. 5 Road, Francis Road and No. 4 Road should not be punished because the City of Richmond refuses to understand that keeping the Garden City Lands in the ALR is in the best interests of Richmond. I'll describe some of the problems:

1. The "**Pilot Project**" is a sham devised to appear to be saving agricultural land. It would instead create even more red tape to make farming more difficult.
2. Re "**Encourage lot consolidation with common ownership**," the City of Richmond is not in the real estate business and has no right to try to manipulate private ownership.
3. Re "**Leases for unconstructed roads**," if there are no road allowances, how are the farmers supposed to access their acreage? My parents live on Granville and use their unconstructed roadway all the time. They even have a large shop that faces it, and that shop would be inaccessible if the roadway gets leased to a farmer. Obviously the idea has not been thought through.
4. "**Registering a covenant on title**" for the purpose of preventing single lots being sold individually is completely unfair to the owners, many of whom are off-shore investors. This plan would be confusing to anybody but especially people who do not have English as their first language. This Big Brother plan is so over the top I can't believe it.