



**To:** Richmond City Council  
**From:** Cecilia Achiam  
Acting Director of Development

**Date:** December 13, 2007  
**File:** 08-4105-04-02/2007-Vol  
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**Re:** Garden City Lands

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**Staff Recommendation**

Whereas:

- (a) the City has contemplated the acquisition of the Garden City Lands for a considerable period of time to provide public amenities;
- (b) the Treasury Board of Canada Secretariat has sold and transferred title of the Garden City Lands to the Canada Lands Company (CLC) after CLC and Musqueam negotiated a Joint Venture Agreement between themselves for co-development of their portion of the site to resolve the injunction granted by the courts to the Musqueam;
- (c) the Musqueam Indian Band, the City of Richmond and Canada Lands Company have reached an agreement in the form of a Memorandum of Understanding (MOU), and Purchase & Sale Agreement, to enable the sharing of the lands between the three parties provided that certain conditions are met, including the removal of the land from the Agricultural Land Reserve;
- (d) the period specified in the MOU will expire on December 31, 2007, thereby requiring an extension;
- (e) the MOU and Purchase & Sale Agreement entitles the City to purchase 50% of the Garden City Land if the ALR exclusion is successful;
- (f) Council recognizes the significant opportunity for using the Garden City Lands to address community needs for both the City of Richmond and the Musqueam;
- (g) without the MOU, the City of Richmond has no legal claims to any of the Garden City Lands; and
- (h) should Musqueam gain ownership of the lands through means other than the MOU, the City may not have any regulatory control over the land use and may not be able to levy property tax.

Therefore be it resolved that:

1. The Mayor and City Clerk be authorized to execute an agreement to extend the Purchase and Sale Agreement for a one-year period ending December 31, 2008, to allow adequate time for the Agricultural Land Reserve (ALR) Exclusion Application process;
2. Staff submit a "Block Application" to the Agricultural Land Commission (ALC) for the exclusion of the properties know as the "Garden City Lands" bounded by Garden City Road, Alderbridge Way, No. 4 Road and Westminster Highway;
3. The proposed concept to create an endowment fund to provide agricultural benefits, including contribution by the City as noted in the staff report, be approved and for the proposed concept to be included in the "Block Application"; and
4. Council endorse Community Wellness and Enabling Healthy Lifestyles, Urban Agriculture, and Showcasing Environmental Sustainability as outlined in the staff report from the Acting Director of Development dated December 13, 2007, as the preferred uses on the City's portion of the Garden City Lands.



Cecilia Achiam, MCIP, BCSLA  
Acting Director of Development

CA:blg  
Att.

FOR ORIGINATING DEPARTMENT USE ONLY					
<b>ROUTED TO:</b>		<b>CONCURRENCE</b>		<b>CONCURRENCE OF GENERAL MANAGER</b>	
Finance.....		Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>
Law.....		Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>
Parks & Rec.....		Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>
<b>REVIEWED BY TAG</b>		YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
			<i>12</i>		
<b>REVIEWED BY CAO</b>		YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
			<i>12</i>		

## Staff Report

### Origin

This is the second of a series of three reports on the Garden City Lands (**Schedule 1**). The first report was an update on the Garden City Lands process received for information by the General Purposes Committee on September 17, 2007. It provided information on the background of the Memorandum of Understanding (MOU) partners and consultation with the agricultural community (**Attachment 1**). Pursuant to the MOU, the parties have entered into a Purchase and Sale Agreement based on the MOU conditions. The MOU is subsumed into the Purchase and Sale Agreement and both documents are from here on referred to collectively as the "PSA" in the report. The third report will be the application to exclude the Garden City Lands from the Agricultural Land Reserve (ALR), to be submitted to Council in early 2008.

The purpose of this report is to seek Council's:

1. authorization to execute the final extension of the PSA to December 31, 2008;
2. agreement to submit a City-initiated "Block Application" to exclude the Garden City Lands from the Agricultural Land Commission (ALC);
3. endorsement of the proposed concept to create an endowment fund to benefit agriculture in Richmond and to include this proposed concept in the "Block Application"; and
4. clarification of the City's intended uses on the City's portion of the Garden City Lands.

Following Planning Committee's direction on December 4, 2007, the staff memorandum in response to the November 20, 2007, Planning Committee Referral on Garden City Lands is attached to this report (**Attachment 2**). The staff memorandum included a legal opinion regarding the ramifications for the City if it did not complete its obligations pursuant to the PSA.

The following is an unabbreviated copy of the legal opinion provided by Lang Michener LLP in response to the three questions posed within the referral from the Planning Committee:

***1. Can COR approach CLC with a request it sell the Lands to COR for \$10,000,000?***

*Unless factual matters have changed without notice to us, CLC on its own behalf and MIB through a Limited Partnership continue to be owners each as to an undivided 50% interest in the Lands. CLC holds the 50% interest of MIB in trust for MIB.*

*Any approach in this regard to sell the Lands would require the agreement of both CLC and MIB.*

*We expect it is unlikely any sale would be considered by CLC and MIB until it is definitively determined whether the Lands will be removed from the ALR. If the Lands are removed from the ALR, we expect the value of the Lands will rise dramatically.*

*If it is determined that the Lands will not be removed from the ALR, it is*

*entirely possible that at that time CLC could sell the lands to MIB as we understand that CLC's mandate is to develop land and not hold it long term for investment. This is not an unrealistic scenario as we understand that MIB has recently indicated a willingness to acquire CLC's interest in the Lands.*

**2. *Can COR abandon the application to remove the Lands from the ALR?***

*Under Section 4.1 of the PSA, it was a condition precedent that COR Council resolve to recommend to the ALC that the Lands be removed from the ALR. This condition precedent was satisfied in connection with the first application to the ALC by CLC, but because there is a new application by COR to the ALC, COR Council must reconsider and resolve to make a recommendation to the ALC. If COR Council does not make this recommendation, the PSA is terminated.*

*Under Section 4.2 of the PSA, it is a condition precedent that the Lands be released from the ALR.*

*This condition precedent has not been satisfied.*

*Section 4.6(a) of the PSA provides that each of CLC and the City will be entitled, by written notice to all other parties to the PSA, to extend from time to time the date for satisfaction of this condition precedent for 1 or more periods of time which will not exceed 2 years in the aggregate.*

*This period has been extended by the parties for the 1 year expiring December 31, 2007 and can be unilaterally extended by either CLC or COR until December 31, 2008 without the consent of any other party to the PSA.*

*In our view, COR does not have the legal ability to withdraw its recommendation to remove the Lands from the ALR while the process for satisfaction of this condition precedent is still ongoing.*

*Pursuant to Section 3.2, COR is required to employ commercial reasonable efforts to expedite and complete the development approval process (part of which was the Council recommendation), and in our view, if COR were to withdraw the recommendation, this could expose COR to allegations of bad faith and a claim for a breach of contract.*

*If this condition is not satisfied by December 31, 2007 or, if extended to December 31, 2008 and not satisfied, the PSA is at an end.*

3. *What happens to the MOU if the PSA terminates as a result of the non-satisfaction of the condition precedent regarding the release of the Lands from the ALR?*

*As a general principle of law, unless the parties otherwise specify, a memorandum of understanding or letter of intent “merges” in the subsequent purchase contract. It is, in effect, superseded and no longer exists unless the parties otherwise specify.*

*Section 4.6. (c) of the PSA provides only Sections 1(22), 1(23) and 2(1) of the MOU continue to be binding on the parties.*

*Sections 1(22) and 1(23) provide that if certain events do not occur after the Lands are removed from the ALR which are rezoning, increased FAR or approval of OCP amendment, the parties are to meet to renegotiate to give effect to the spirit of the MOU and Section 2(1) provides for a mediation option should the parties reach an impasse.*

*In our view, the obligation to renegotiate under these Sections only arises where the City has refused to act in rezoning, increasing the FAR or approving the OCP.*

*Where the PSA is terminated as a result of the failure to have the Lands removed from the ALR because of the actions of the ALC, Sections 1(22) and 1(23) are not relevant and the MOU is expired.*

*We do not, at this point, have an opinion how a court would decide this issue if there was ever a challenge of this interpretation.*

*The MOU is drafted in such a way that there are different interpretations possible.*

In addition, recent information in the form of a letter from the Treasury Board of Canada Secretariat clarifying its policy position regarding the future of the Garden City Lands site has been attached (**Attachment 3**). The Secretariat noted that, if the Agricultural Land Reserve (ALR) exclusion application is unsuccessful *“the lands are owned by Canada Lands Company (CLC), not the Federal Government, so it will be up to the CLC to develop appropriate management and/or disposal strategies. There is no automatic reversion of these lands to the Federal Government”*.

## Analysis

### 1. Memorandum of Understanding (MOU) and Purchase and Sale Agreement (PSA) Extension

Staff recommend that Council endorse an extension of the PSA ending December 31, 2008, to continue the spirit of cooperation and good will. Previously, the partners reached consensus to give a one-year extension ending December 31, 2007, to prepare the second submission for exclusion from the ALR. The preparation of background studies for the Garden City Lands is being lead by CLC and is well underway, but will not be completed by December 31, 2007. It is necessary to extend the PSA a second time to accommodate the ALR exclusion application.

Under of the PSA, section 4.6(a) states that either CLC or the City is entitled to extend the agreement. The maximum extension possible is to December 31, 2008.

### 2. ALR Exclusion Application (Block Application)

Although the City would be the lead applicant in a “Block Application”, CLC would retain its role as project manager in directing the work of the consultants to prepare for the application. A summary of the consultant work covering agricultural capability and viability, community needs for both the Musqueam and the City, and urban design context of the Garden City Lands is provided in (**Attachment 4**) for information. The agricultural capability and viability study will examine the types of viable commercial crops suitable to the agricultural capability of the site, the methods and costs for any required improvements, difficulties for farming given the location of the site and financial viability comparisons with producing similar crops in Richmond and in the wider Lower Mainland region. The community needs assessment for the Musqueam will concentrate on the social and economic needs while the Richmond study will deal mainly with open space and public amenity needs. The Urban Design Context report will examine unique attributes of this site based on its location at the edge of City Centre as well as the opportunities and constraints for the future master plan. It is anticipated that the application will be presented to Council in early 2008 for consideration. The application will incorporate findings from all the consultants.

The September 17, 2007, staff report outlined the concerns cited by the Agricultural Land Commission (ALC) in its rejection of the previous ALR exclusion application (**Attachment 1**). More specifically, in the ALC Minutes (Resolution #431/2006), the ALC noted that “It had been expected that the City would advance the argument for community need for the entire proposal, not simply for the park/open space and trade and exhibition centre components.”

In consideration of the ALC position, staff recommend that the City apply for a local government initiated ALR Exclusion Application, commonly known as a “Block Application” (**Attachment 5**) for the following reasons:

- The City is the best candidate to represent “community needs” for Richmond<sup>1</sup>. Richmond can best articulate its vision for public amenities and alleviate resident concerns about the

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<sup>1</sup> The City has completed extensive studies and policies review affecting the site. A partial list includes:  
(a) the City Centre Area Plan Study (CCAP) under way, the Council adopted West Cambie Area Plan (WCAP) by Planning and Development Department;

eventual land use on both the Public Land and the development land by taking the lead as “applicant” on behalf of the PSA partners;

- Under the PSA Agreement, the site development will follow municipal regulatory processes including extensive community consultation as part of the amendment to the Richmond Official Community Plan (OCP), Rezoning Application and Development Application processes. Again, the City is in the best position, out of the three partners, to represent this process;
- A “Block Application” requires the City to conduct a Public Hearing PRIOR to submitting the application to the ALC. This will give Richmond residents opportunities to provide direct input to Council at the front of the end of the process; and
- The “Block Application” process will also provide the ALC with the option to rely on the local government public consultation process instead of holding its own public process which would likely be less rigorous and open.

Separate from the City’s role to represent Richmond’s community needs, the City will also be advocating community needs on behalf of the Musqueam as part of the ALR exclusion application. It is important to note that the financial resources from the development of the CLC/Musqueam portion of the Garden City Lands is crucial in enabling the Musqueam to address some of their pressing community needs, including but not limited to, economic sustainability, housing on the Reserve, social programs and services, employment, and cultural and heritage legacy.

#### ***Public Consultation for Block Application***

Based on previous discussions, staff believe that Council wishes to consult broadly throughout the process. A comprehensive public consultation process, in addition to the requisite Public Hearing for a “Block Application”, will be followed to ensure comprehensive public involvement and outreach to as many Richmond residents as possible. There are three crucial phases for public engagement on the Garden City Lands process.

**Phase I:** The first phase is the time after Council endorsement of the Block Application but before the Public Hearing. This is the opportunity to inform the public about all facts relating to the Garden City Lands, the partners and the partnership structure, as well as generating ideas for public amenities on the City’s portion of the Lands and principles to guide potential future urban development on the CLC/Musqueam portion of the Garden City Lands.

A series of public engagement activities, including a minimum of three public open houses, are planned to be held at various locations throughout Richmond. The open houses and communication materials will be managed by CLC with comprehensive input from the City. The open houses will be jointly attended by the partners and the consultant team. The purpose

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(b) the Parks, Recreation and Cultural Services Master Plan, which includes the community needs assessment 2001 and the Facilities Strategic Plan endorsed by Council, June 25, 2007. Richmond Field Sport Strategy 2001-2011 (reference to improving facilities), Major events Plan 2007-2012 adopted by Council in 2007, (field sports tournaments); and

(c) the Richmond Food System Assessment prepared by the Richmond Poverty Response Committee which was received for information by Council and the Richmond Agricultural Advisory Committee February and March of 2007.

of the public engagement will be to inform and consult Richmond residents. The topics will range from factual information about the site, such as the legal ramifications of the PSA; the aspirations for the site, including imageries of the potential development built forms and ideas and images of the open space and community uses for the site; and CLC's development track record throughout the Country and its mandate to leave lasting legacies in each of the communities it works in. This later aspect will distinguish CLC from private sector developers who would reflect a more prevalent commercial interest in their development plans.

Details on the dates, location and presentation material/discussion topics for these public engagement activities are still being developed and an update will be presented to Council in the near future. The following is a summary of the public engagement activities completed or contemplated to date:

<b>Phase I Public Engagement Activity</b>	<b>Status</b>
The Richmond Community Poll.	Results presented to the General Purposes Committee on September 17, 2007.
Creation of web link on the City website to provide information (e.g., Council reports, Richmond Community Poll results) and notice for public consultation opportunities.	On going.
Media reports and letters to the editor.	On going.
Several open houses at convenient locations other than City Hall; such as shopping malls and community halls in various locations throughout Richmond with interpretation information/services available.	After Council endorsement of Block Application and before Public Hearing (Anticipated to be early in 2008)
Mail-drop to respond to frequently asked questions about the PSA, Garden City Lands and the ALR, as well as encourage residents to actively participate in the public consultation processes on the Garden City Lands.	After Council endorsement of Block Application and before Public Hearing (Anticipated to be early in 2008).
Provide community outreach to meet with specific community organizations/groups upon request (e.g., to date, staff have attended the Richmond Sports Council and have provided an informational package to the Richmond Chamber of Commerce upon their request).	On going.
The requisite development site signs for the Block Application.	To be carried out at the appropriate time.

It is anticipated that the extensive public consultation in Phase I will provide a solid factual foundation for Phase 2 of the public engagement process.

**Phase 2:** The more formal public consultation process will be the Public Hearing which is part of the Block Application requirement. Given the interest expressed by Richmond residents on Garden City Lands, it is anticipated that the Public Hearing may take several nights and the availability of multiple dates will be announced to the community. While the idea of holding Public Hearings at satellite locations has been considered, it is believed that Council



Chambers at City Hall is the best location for a Public Hearing because of the available audio/visual technologies and seating capacity.

<b>Phase II Public Engagement</b>	<b>Status</b>
The requisite public notices including but not limited to newspaper and written notices for Block Application Public Hearing.	To be carried out at the appropriate time.
City of Richmond Public Hearing.	To be carried out at the appropriate time.

**Phase 3:** The ALR Exclusion Application is not intended to replace the Master Planning process on the Garden City Lands. If the ALR Exclusion is successful, detailed planning work and comprehensive public consultation with Richmond residents and stakeholders will take place as part of the Master Planning exercise for the site once the exclusion from the ALR is granted. In addition, Richmond Official Community Plan (OCP) Amendment, Rezoning and Development Permit processes, which include all opportunities for public input, will apply.

### 3. **Benefits to Agriculture in Richmond**

In preparation for the ALR Exclusion Application, staff have worked closely with the Richmond Agricultural Advisory Committee (RAAC) between March and September 2007 to explore ideas on how best to contribute to Richmond's agricultural community if the Garden City Lands are taken out of the ALR. A variety of options (**Attachment 6**) were discussed, but the RAAC preferred not to decide on any specific projects as part of the discussions to date, to maintain maximum flexibility.

The RAAC endorsed the concept of creating an agricultural endowment fund to benefit agricultural at its May 2007 meeting. The RAAC also provided the opinion that any endowment should be financially substantial so that its impact can be sustained over the long term and must incorporate a flexible delivery mechanism to enable the agricultural community to respond to issues and projects as they arise over time. Staff note that the endowment could be used in a variety of ways including education and research, improvement to soil to increase productivity, production technologies, buying land to add to the ALR if the opportunity arises, and so on.

#### ***Agricultural Endowment Fund***

Staff have obtained agreement from both CLC and Musqueam to create an agricultural endowment fund of approximately \$10,000,000 to be collected over a 10-year period as a

<sup>2</sup> The City has completed extensive studies and policies review affecting the site. A partial list includes:  
 (d) the City Centre Area Plan Study (CCAP) under way, the Council adopted West Cambie Area Plan (WCAP) by Planning and Development Department;  
 (e) the Parks, Recreation and Cultural Services Master Plan, which includes the community needs assessment 2001 and the Facilities Strategic Plan endorsed by Council, June 25, 2007. Richmond Field Sport Strategy 2001-2011 (reference to improving facilities), Major events Plan 2007-2012 adopted by Council in 2007, (field sports tournaments); and  
 (f) the Richmond Food System Assessment prepared by the Richmond Poverty Response Committee which was received for information by Council and the Richmond Agricultural Advisory Committee February and March of 2007.

consideration of the rezoning process for the developable portion of the Garden City Lands. The focus of the endowment and the details of an accompanying delivery mechanism can be developed in consultation with the Richmond agricultural community if approval is obtained for exclusion of the Garden City Lands from the ALR. However, an important first step has been achieved by obtaining the support of both the CLC and Musqueam to contribute to the agricultural endowment fund prior to submitting the Block Application. (**Attachment 7**).

If the ALR Exclusion Application is successful, the PSA partners will consult with the Richmond Agricultural Advisory Committee to develop the focus and delivery mechanisms for the endowment and staff will present the outcome to Council for consideration and approval. The RAAC has advised that it wishes to incorporate extensive consultation with the agricultural community regarding the endowment at the appropriate time. Staff believe that further, future consultation is appropriate to ensure that the endowment provide a lasting contribution to the viability and sustainability of farming in Richmond over the long term.

#### *Timing of Endowment Payment and City Contribution*

The CLC/Musqueam contribution to the Endowment fund is proposed to be \$2.00/ft<sup>2</sup> of development and would be paid as development on the site occurs. This will be in addition to other community amenities that are normally expected as considerations for approving a rezoning.

Based on the understanding in the PSA, it is anticipated that the project may generate between 467,830 m<sup>2</sup> (5,035,500 ft<sup>2</sup>) to 584,790 m<sup>2</sup> (6,294,800 ft<sup>2</sup>) of floor area<sup>3</sup> depending on the approved and subsequent built out density on the development sites. Depending on the floor area of the development, the endowment may exceed \$10,000,000. Staff have obtained verbal agreement from CLC that a minimum of \$5,000,000 of the endowment would be paid within five years from receipt of 3<sup>rd</sup> Reading for rezoning, and a further \$5,000,000 would be paid within 10 years from receipt of 3<sup>rd</sup> Reading as well. Beyond these guarantees, timing for receipt of funds for the endowment would be determined by market forces.

The RAAC has advised that the Richmond agricultural community would like to realize the full benefit from the Garden City Lands agricultural endowment fund as soon as possible. This would require that the City of Richmond top up the annual income comparable to the interest that a \$10,000,000 endowment would generate in the interim until the full contribution into the endowment is received from CLC/Musqueam. Staff believe that it would be appropriate for the City to commence such contributions once subdivision of the site occurs and the City obtains title to the Public Lands. In a worst case scenario, the maximum total financial contribution from the City would be approximately \$3,750,000 over ten years. It is noted that in the event that exclusion is not successful, no payment would be required from any of the parties.

The City may implement an agricultural endowment funding scheme based on the recently enacted section 905.1 of the Local Government Act (LGA). Under this section of the LGA, Council may enter into development agreements on a site-by-site basis at the time of rezoning.

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<sup>3</sup> Based on 57.8 ac of net development site (i.e. gross development site of 68 acres less 5% (3.4 acres) of site area for parks less 10% (6.8 acres) for road) x 2.0 F.A.R and 2.5 F.A.R.

In return for an agreement not to downzone the subject lands for the duration of the development agreements (10 years with possible renewal) after the applicant's rezoning has been adopted, Council may rely on terms and conditions in the development agreement under which the developer must provide amenities or cash for amenities. The development agreement would be secured by registration of covenants on title.

#### ***Funding Sources for City's Contribution to the Endowment***

If the City's contribution to top up the annual endowment income is approved, Finance staff propose that the funding source for the City's contribution be determined as required. The contribution can be funded through either annual surplus appropriation or submissions through the annual operating and/or capital budgets as applicable since the timing for the City's contribution to the endowment fund has not been determined and is subject to a variety of factors including but not limited to the timing for ALR exclusion, rezoning and subdivision of the site.

If Council endorses the proposed concept to provide agricultural benefits staff will include the proposed endowment concept in the "Block Application".

#### ***Partnership to Promote Urban Agriculture***

In addition to the proposed endowment, staff have been actively pursuing partnership opportunities to promote urban agriculture.

For example, staff are in discussion with Kwantlen University College and its research/outreach arm, the Institute for Sustainable Horticulture (ISH) regarding a possible partnership to establish an Urban Agriculture Research and Education Centre in Richmond. Researchers from ISH are already involved in some of the food security projects at Terra Nova Park such as the Fruit Tree Sharing Program. A portion of the public land on the Garden City site may be an ideal location for demonstration plots as part of the proposed ISH initiatives given its proximity to the Kwantlen University College Richmond Campus and proximity to urban development and residents in City Centre.

The goal of the ISH is to develop a research, teaching and demonstration farm facility for advanced research to promote a viable, sustainable, food production in the urban and urban-rural interface. The programme is envisioned to include formal education (certificates, diploma and degree program in urban agriculture); continuing education (seminars, workshops, conferences, non-credit classes, demonstrations and field days); research (e.g., biologically based pest management, soil fertility/compost management, companion cropping, regional food systems, post production handling, etc.); and outreach and development (e.g., booklets, fact sheets, web site, working with stake holders such as community organizations with interest in food security and green roof technologies. Staff to staff discussions regarding possible projects will continue and progress will be reported to Council in the future.

#### **4. Proposed Public Amenity Uses for Public Consultation**

There is considerable potential and community value of 65 acres of open space at the Garden City Lands. The future of the Garden City Lands has been broadly discussed in the community, and the range of community interests has revealed multiple interests for park and open space uses.

The Garden City Lands are critical to the future of a sustainable and livable City because of its location to the city centre.

- a major open space on the east side of City Centre would serve the needs of the surrounding residential and mixed-use neighborhoods within a reasonable distance (800 metres).
- the proximity to the ALR provides the context for the creation of a unique landscape that contains not only public amenity but also a setting to raise awareness of that proximity and the importance of the ALR.
- The Garden City Lands are at the terminus of a linear park and major greenway proposed for Lansdowne Road, connecting to the Olympic Oval and the waterfront, creating a uniquely interconnected and accessible system of major public open spaces.

The detailed Master Plan for the Garden City Lands will be prepared if an ALR Exclusion Application is successful. In the interim, staff recommend that Council clarify its position regarding the type of uses envisioned on the City's portion of the Garden City Lands. Based on discussions to date, staff believe that Council's preference is to provide open space uses rather than buildings and structures on the City's portion of the Garden City Lands

At this stage of planning, staff believe that the most appropriate uses for the Garden City Lands fit into these three purposes:

##### ***Community Wellness and Enabling Healthy Lifestyles***

As a City committed to maintaining and improving community wellness and healthy lifestyles, the provision of a variety of outdoor public amenities is necessary to serve a growing population. Examples of these amenities include: 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. In addition, a range of outdoor community sport amenities and playing fields is envisioned to provide increased capacity for community use and for tournaments.

##### ***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

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<sup>4</sup> Based on 57.8 ac of net development site (i.e. gross development site of 68 acres less 5% (3.4 acres) of site area for parks less 10% (6.8 acres) for road) x 2.0 F.A.R and 2.5 F.A.R.

urban/agricultural interface presents a tremendous opportunity to engage the community in awareness building and active programming related to agriculture and food security.

### ***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 to integrate environmental resources into urban areas. The size and location of the Garden City Lands could present a unique opportunity to develop another environmental showcase such as the establishment of wetlands for storm water management and habitat, the creation of an urban forest would contribute to improved air quality, alternative energy technologies and improving the city's resilience to climate change.

The Garden City Lands represent a unique opportunity to provide a broad range of public amenities integrated with significant urban agricultural and environmental features.

## **5. Potential Community Benefits from the Garden City Lands Partnership**

If the ALR exclusion is successful, there will be significant benefits to the City. By meeting the City's obligations as stipulated in the PSA, the City will be able to purchase 50% (68 acres) of this strategically located site for \$4,700,000, which is significantly below current market value for park land in the City Centre. Ownership of 68 acres of public open space will go a long way in achieving the park and open space requirement envisioned in the City Centre Area Plan and provide maximum flexibility to address community needs described above. In addition, City jurisdiction will be applicable for the entire site including the CLC/Musqueam portion of the land. In this way, public input on the future development of the entire site will be assured.

It is envisioned that any future development on this site will conform to the principles set out in the City Centre Area Plan Study. The plan envisions a "complete community" based on sustainability practices such as affordable housing, green roofs, LEED certification, community gardens, alternative energy sources (e.g., geothermal district utilities), and Transit Oriented Development that emphasis public transit and high quality pedestrian realm.

Finally, Garden City Lands is not currently contributing to agriculture in Richmond. The establishment of a \$10,000,000 endowment will provide direct benefits to agriculture in Richmond that is not currently possible. City ownership of a portion of the site also opens up partnership opportunities to explore innovations to address food security and urban agriculture.

## **Financial Impact**

### **City's Contribution**

If the ALR exclusion application is successful, the City will be responsible to top up the annual interest earned on the proposed \$10,000,000 endowment for up to ten (10) years. The City's maximum contribution would be \$3,750,000. This amount may be reduced if the real estate market remains strong and the endowment is fully established in less than the anticipated 10-year period.

### Opportunity Costs

As noted above, the strategic value of acquiring 68 acres portion of Garden City Lands for less than \$9,000,000 (\$4,700,000 purchase price + maximum agricultural benefit contribution of \$3,750,000) is immense. It is also prudent to consider the consequences of the City not taking any action.

Of the three PSA partners, the City is the only one that does not have legal claims or entitlement to this land. Besides having to purchase additional alternate land to meet our community needs for parks and open space in and around City Centre for much higher costs, the City and its residents risk losing control of future development on the Garden City Lands.

### **Conclusion**

The partnership with CLC and the Musqueam as stipulated in the PSA currently in place provides certainty with respect to process and tenure. This is a once in a life time opportunity for the City to take charge of the Garden City Lands.

The City will be able to acquire a significant portion of the site for public amenities with an emphasis on parks and open space; have regulatory control on how the remainder of the site is developed and to recognize the Musqueam's aboriginal rights to the lands and support their efforts to address some of their pressing community needs. Any deviation from the PSA will put the City's negotiated interest in the Lands in jeopardy. As such, staff recommend the following:

1. The Mayor and City Clerk be authorized to execute an agreement to extend the Purchase and Sale Agreement for a one-year period ending December 31, 2008;
2. Staff submit a "Block Application" to the Agricultural Land Commission (ALC) for the exclusion of 5555 No. 4 Road;
3. The proposed concept to create an endowment fund to provide agricultural benefits and to include the proposed concept in the "Block Application" be endorsed; and
4. That Council clarify the City's intentions and endorse Community Wellness and Enabling Healthy Lifestyles, Urban Agriculture, and Showcasing Environmental Sustainability as the preferred amenity uses for the City's portion of the Garden City Lands.

The opportunity costs for not proceeding with the Garden City Lands is enormous.



Cecilia Achiam, MCIP, BCSLA  
*Acting Director of Development*  
(Local 4122)

CA:blg

Schedule 1: Location Map and Aerial Photo

Attachment 1: Garden City Land Update Report to General Purposes Committee on  
September 17, 2007

Attachment 2: Staff Memorandum and attachments on Garden City Lands to December 4, 2007  
Planning Committee in response to Planning Committee Referral of November 20,  
2007

Agricultural Land Reserve Data

Attachment 3: Letter from Treasury Board dated December 4, 2007

Attachment 4: Update on Consultant Work

Attachment 5: What is a Block Application?

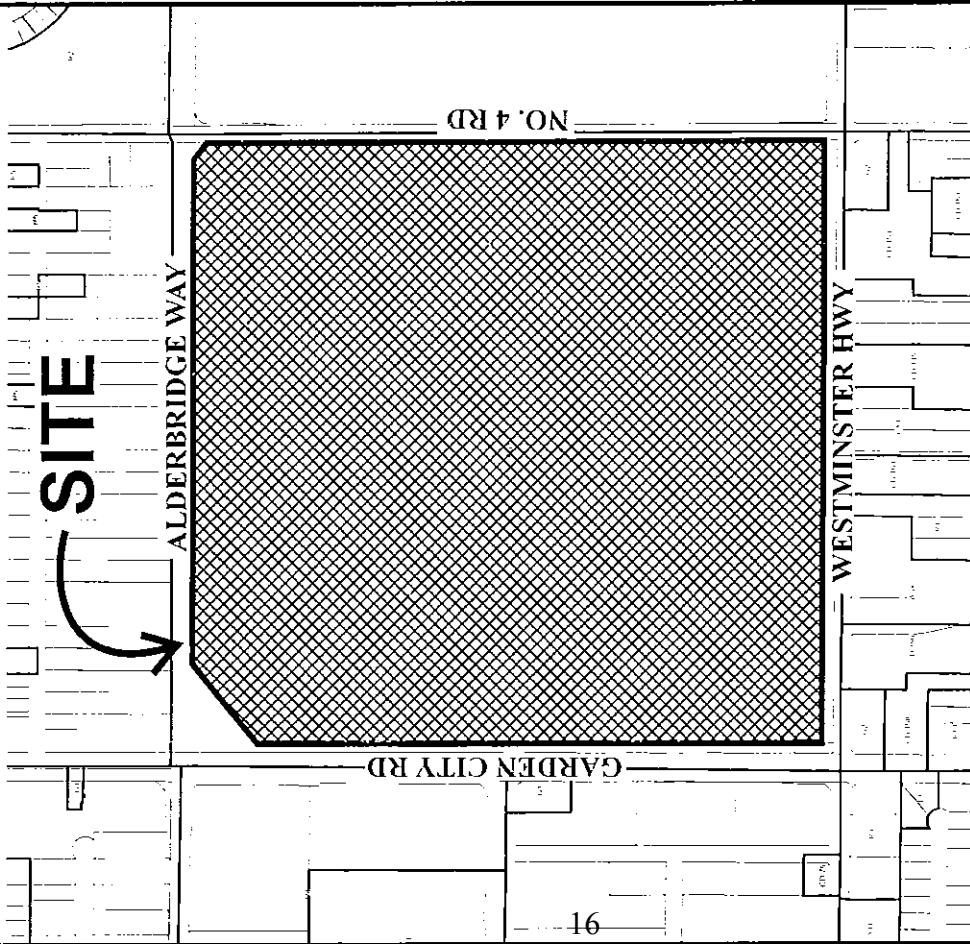
Attachment 6: Agricultural Benefit Options discussed with Richmond AAC

Attachment 7: Letter from Canada Lands Company committing to the amenity contribution



City of Richmond

**SITE**

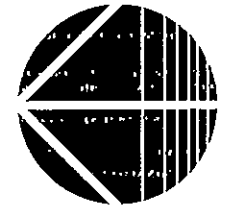


ALDERBRIDGE WAY

GARDEN CITY RD

NO. 4 RD

WESTMINSTER HWY



## Subject Site

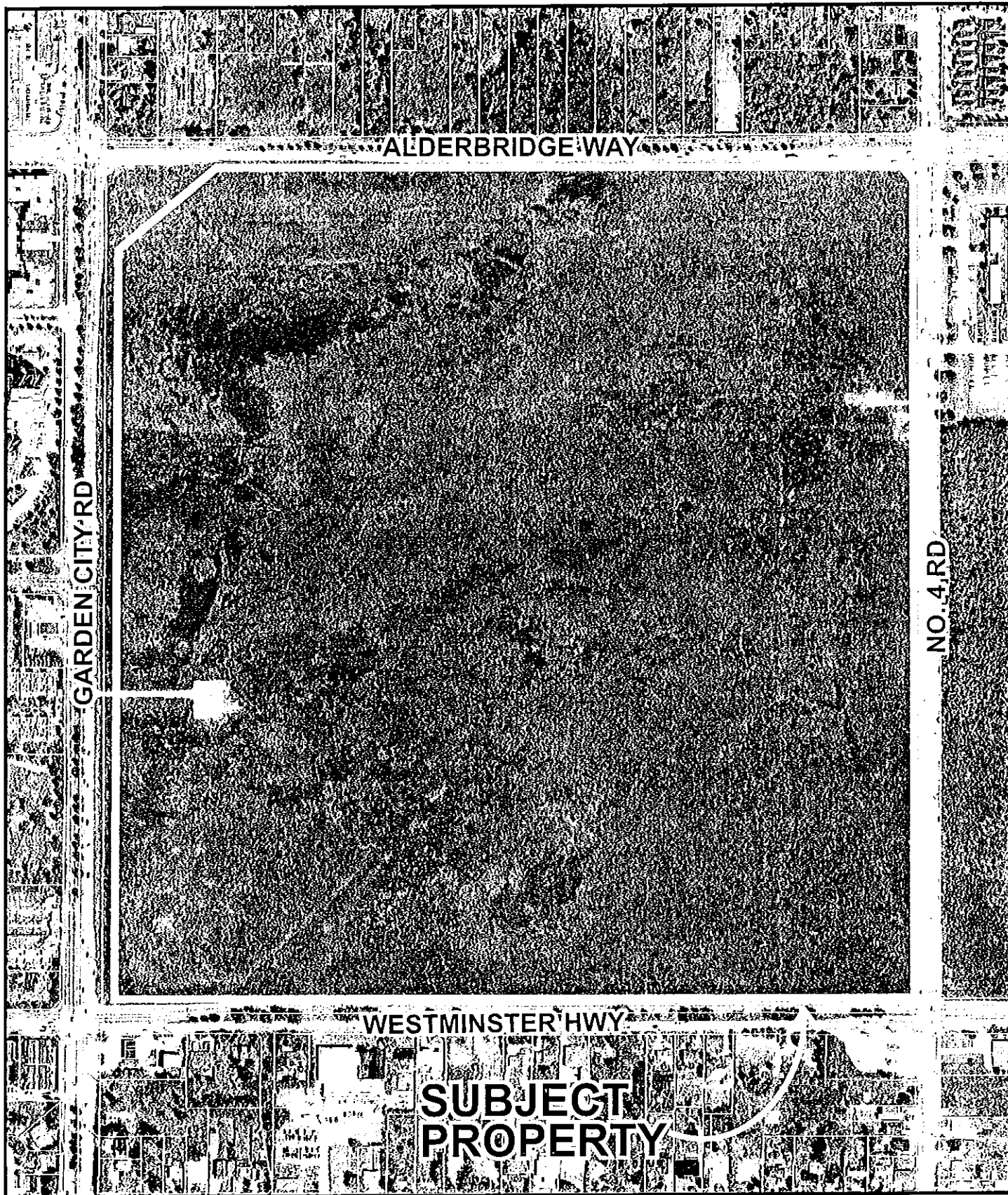
5555 No. 4 Rd (Garden City Land)

Original Date: 08/30/07

Revision Date:

Note: Dimensions are in METRES





## Subject Site

5555 No. 4 Rd (Garden City Land)

17

Original Date: 08/30/07

Amended Date:

Note: Dimensions are in METRES



## City of Richmond

## Report to Committee

**To:** General Purposes Committee  
**From:** Wayne Craig  
 Acting Director of Development

**Date:** August 30, 2007  
**File:** 08-4105-04-02/2007-Vol  
 01

**Re:** Garden City Land (5555 No. 4 Road) Update

## Staff Recommendation

That Council receive this report for information.

Wayne Craig  
 Acting Director of Development

CA:blg  
 Att.

FOR ORIGINATING DEPARTMENT USE ONLY		
CONCURRENCE OF GENERAL MANAGER		
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

The signing parties to the Memorandum of Understanding (MOU) extended the MOU for Garden City Land to facilitate a forthcoming new Agricultural Land Reserve Exclusion Application.

The purpose of this report is to:

1. Ensure that Council is reacquainted with the background of the MOU and familiar with the MOU partners including the Canada Lands Company (CLC) and the Musqueam First Nation.
2. Give an update on the process and time line of the project and describe the reports that staff will be bringing forward for the balance of 2007;
3. Provide a brief update on the consultation process with the Richmond Agricultural community and the work being completed by the consulting team; and
4. Present preliminary information on the Richmond Community Survey commissioned by CLC on behalf of the MOU partners.

### Background

#### Site History

In 2001, the Department of Fisheries and Oceans (DFO) declared the approximate 136 acres of Garden City Land (at 5555 No. 4 Road) bounded by Garden City Road, Alderbridge Way, No. 4 Road and Westminster Highway surplus, and in November 2003 received Treasury Board approval to transfer the land title to the Canada Lands Company (CLC). This land is considered to be within traditional Musqueam Indian Band territory.

In January 2004, the Musqueam was granted a Court Injunction, preventing the transfer of the land to the City until their long-standing interest in the Garden City Land was satisfactorily recognized and accommodated for. On March 18, 2005, following a period of intense negotiations, the Musqueam First Nation, the City of Richmond and the CLC reached an agreement, sharing the land between the three parties in a landmark Memorandum of Understanding (MOU).

In 2006, CLC made an unsuccessful application to remove it from the Agricultural Land Reserve (ALR). Subsequently, in 2007, the signing partners of the MOU extended the MOU and are in the process of preparing a new ALR Exclusion Application for submission.

#### Memorandum of Understanding

The MOU is a tri-party agreement that has provisions of two extensions of one year each. The agreement is in the first extension period. The execution of the MOU is subject to the land successfully being taken out of the ALR. If the land remains within the ALR, the MOU becomes invalid and the land will likely become entangled in a lengthy court case/treaty negotiation; neither crown land, nor treaty land is subject to ALR or local zoning regulations and bylaws. Under the MOU:

- 50% of the land would go to the City of Richmond for public use (approximately 68 acres) including parkland, green space and other public amenities such as recreational or cultural facilities and a trade and exhibition centre, and 25% each to the CLC (approximately 34 acres) and Musqueam First Nations (approximately 34 acres) for a joint venture development.
- The City would pay \$4.77 million for its share (approximately 54.5%-72.5% of the site) as valued at the time of the MOU.
- Any development by the CLC and the Musqueam First Nation on the land must go through Provincial and Municipal land use approval processes, integrate with the Official Community Plan (OCP) and comply with City zoning bylaws. This process will enable public and Council to provide further input into the development of the land.

#### Memorandum of Understanding Partners

The following provides a brief description of CLC and its projects and how the MOU can address some of the community needs of the Musqueam.

#### 1. Canada Lands Company

The Canada Lands Company CLC Limited (CLC) is an independent Crown corporation created by the Federal Government in 1996 with a specific mandate to 'optimize the financial and community value obtained from strategic properties deemed surplus to Federal program purposes'. In carrying out this mandate, CLC purchases properties from the Government of Canada, improves and revitalizes them, and then manages or sells them in order to produce the best possible benefit for both local communities and Canadian taxpayers.

The CLC is currently active in 22 Canadian municipalities. One of their most recent developments in British Columbia is a 153-acre site known as "Garrison Crossing" in Chilliwack (a former military barracks, largely untouched since World War II).

Garrison Crossing includes the refurbishment of 235 former military single and multi-family homes on the base, as well as a variety of new single and multi-family units. It will feature sustainable practices, over 8 acres of public open space including a heritage woodlot (2.5 acres) with extensive native species. Furthermore, creative construction methods are incorporated to preserve old growth trees on the site. For example, roads have been built around trees; holes have been drilled under root systems and trees have been relocated.

CLC has worked extensively with the governmental agencies and the community in Chilliwack throughout the planning stage. When completed, Garrison Crossing will be a new community of approximately 1500 residential units planned around a new pedestrian-oriented retail centre (with approximately 90,000 ft<sup>2</sup> of commercial space to provide local services such as grocery store, drug store, banks and restaurants). A new network of all-weather gravel pathways connecting the residents with the amenities will link the entire neighbourhood. The proposed amenities includes a community recreational facility converted from former military building with an indoor pool, outdoor spray park, picnic areas, children's play area and a new network of all-weather gravel pathways connecting the amenities.

## 2. Musqueam

For thousands of years, the resources on land, which included the City of Richmond, are part of the traditional territory of the Musqueam people and supported their community. Today, the Musqueam people live on a very small land base that cannot meet their economic, social, cultural, employment, and residential needs. The Garden City Partnership will provide the opportunity to address some of the Musqueam needs and create a lasting legacy.

- **Economic Sustainability:** Create the financial resources to move the Musqueam people from a semi-dependant community to a self-sufficient one that will service the social, health, educational and community programs for generations of Musqueam members
- **Housing:** There is currently over 230 people on the band housing priority list and significant financial resources will be required to address this problem and avoid the negative consequences of over crowding, forced departure from the community, and homelessness.
- **Social Services:** The Musqueam community is challenged by the combination of a growing elder population and a significant increase in the young members of the band. Insufficient resources are available to sustain social, educational, recreational, and health programs for both the elderly and youth.
- **Employment:** The Garden City Land partnership will provide the opportunity for training and direct employment as part of the multi-year development of the property. Jobs in the construction, real estate, urban planning and marketing fields would be examples of the areas where direct employment and training could occur. In addition, there may be the opportunity for Musqueam businesses to participate in the commercial elements created on the site.
- **Culture and Heritage:** Recognizing the historic connection the Musqueam people have with these lands, the opportunity is available to physically present their heritage in the form of traditional art works on the site. There is also the potential for the creation of an interpretive centre to showcase their heritage, traditional arts, and culture to provide a lasting focal point for the expression of their heritage and culture.
- In addition to improving the economic well being of the Musqueam, another lasting legacy is the leadership demonstrated by the representatives of the three levels of Government in creating this historic partnership that will be an example to other first nations on how the relationship between the parties was moved from litigation, mistrust, and conflict to a partnership that brings lasting benefits to all.

## Analysis

### Consultation with the Richmond Agricultural Community

The previous Agricultural Land Commission (ALC) exclusion application was not supported by the Richmond Agricultural Advisory Committee (RAAC) and rejected by the ALC in 2006 for these reasons:

- it did not address agricultural viability and suitability of the site;
- lack of demonstrable benefit for agricultural viability in Richmond;
- lack of convincing community need arguments; and
- the proposal was inconsistent with preservation of agricultural land.

A multi-disciplinary consulting team with expertise in site planning, agricultural and environmental assessment, civil, soils, geotechnical and transportation engineering, recreational and community needs, economic viability and public consultation has been engaged to prepare the forthcoming ALR exclusion submission. The team has completed field work and are preparing various technical reports on soils, community need for the Musqueam and agricultural viability of the site. In addition, the team is exploring some preliminary land use scenarios based on the MOU for financial feasibility analysis and compatibility with the Council endorsed City Centre Area Plan Study.

The team has also been seeking input from the Richmond agricultural community through the Richmond Agricultural Advisory Committee (RAAC) and the Richmond Farmers Institute (RFI) to formulate a strategy to address benefit for agricultural viability in Richmond. It is anticipated that a new ALR exclusion application will be submitted to Council before the end of 2007. This active consultation with the agricultural community will help shape the strategy to provide agricultural benefits to be incorporated into the forthcoming ALR exclusion application.

The RAAC is adamant that any proposed benefits to agriculture derived from the Garden City Land must not be in-lieu of implementation of projects that are already included in the City's work program, such as those identified in the East Richmond Agricultural Water Supply Study presented to the Public Works and Transportation Committee on June 21, 2006. The Garden City Land ALR Exclusion Application will include provisions for agricultural benefits that are the direct result from developing the Garden City Land.

#### Next Steps



Staff will be bringing two additional reports to Council in the next few months based on the findings and recommendations from the consultants upon completion of their studies and analysis. The first report will seek Council approval for the City to be the applicant for the ALR Exclusion Application and endorsement of an agricultural benefit package for inclusion into the application after completing the pre-application phase of consultation with the Richmond agricultural community through the RAAC. The second report will be the ALR Exclusion Application submission prepared by the consultant team. The application will address all the issues identified by the ALC outlined earlier in this report.



In addition, CLC intends to conduct community outreach to clarify the MOU and introduce itself and its development track record to Richmond residents throughout the Fall of 2007. Formal public consultation process will be conducted as part of the ALR Exclusion application process.

This table summarizes the proposed timeline of the Garden City Land process for 2007.

TASKS	2007												2008
	J a n	F e b	M a r	A p r	M a y	J u n	J u l	A u g	S e p	O c t	N o v	D e c	?
MOU Team-conduct research and prepare ALR exclusion application													
Pre-Application Consultation with Richmond farming community (RAAC & RFI)			▲	▲	▲		▲	▲	△				
Council Update									▲	△			
Community Outreach										.....			
ALR Exclusion Application & Referral (including stakeholders & public consultation/outreach)												.....	

LEGEND

 currently on-going process
  task completed

 future process
  future task

#### Related Initiatives/Studies Completed or Currently Underway

The following table summarizes some of the key initiatives/studies that are either under way or completed by various sources. Applicable information from these studies and other sources will inform the preparation of the upcoming Garden City Land ALR exclusion application. The Richmond Community Survey is highlighted given its interesting insights into the community's perspective.

Agency	Initiative/Study	Date
City of Richmond	Richmond Agricultural Viability Strategy	February 03
	Parks, Recreation and Cultural Services Facilities Strategic Plan	June 07
	East Richmond Agricultural Water Supply Study	May 06
	Parks, Recreation and Cultural Services Master Plan for 2005-2015	July 07
	City Centre Area Plan Update	Current-concept endorsed by Council (February 6/07)
MOU Partners	Musqueam Community Assessment	Current
	Geotechnical Analysis	Current
	Agricultural & Environmental Assessment	Current
	Land Use Concepts	Current
	Richmond Community Survey	June-August 07

#### The Richmond Community Survey

This survey of community attitudes in Richmond was commissioned by CLC to understand public views regarding the Garden City Land tri-partite agreement and to place those views within the broader community agenda. Four focus groups were conducted to help develop specific items for the survey prior to it being administered to 508 Richmond residents between July 26-29, 2007, including 106 in the immediate vicinity (the area bounded by No.3 Road, Cambie Road, Highway 99 and Granville Avenue) of Garden City Land, and 402 in the broader community.

These questions were designed to understand the priority issues for Richmond residents and their awareness of issues related to the Garden City Land. Topics included:

- public awareness of the Musqueam injunction and public views on litigation versus negotiations
- general knowledge on the Garden City Land MOU and the MOU partners
- attitudes towards ALR and its application to the Garden City Land
- explore local Richmond issues that are important to the public
- assess public opinion on potential public amenities on the Richmond portion of the Garden City Land; and
- discover public attitudes regarding growth, density, land claims, public amenities and green space

Among other findings, the preliminary results indicates that Richmond residents are moderately in support of the MOU, want to protect green space and have a desire for a range of public amenities to be incorporated on the site. The final results are being compiled now and the consultant will be available to present the completed analysis and findings of the survey at the General Purposes Committee Meeting on September 17, 2007 as part of the presentation of this staff report.

### **Financial Impact**

No impact at this point. Financial impact to the City with respect to the Garden City Land ALR exclusion application will be discussed in a separate report to General Purposes Committee following the September Richmond Agricultural Advisory Committee.

### **Conclusion**

The City's full participation in the Garden City Land to achieve public benefits is predicated on the Memorandum of Understanding (MOU) which is subject to an Agricultural Land Reserve (ALR) exclusion of the Garden City Land.

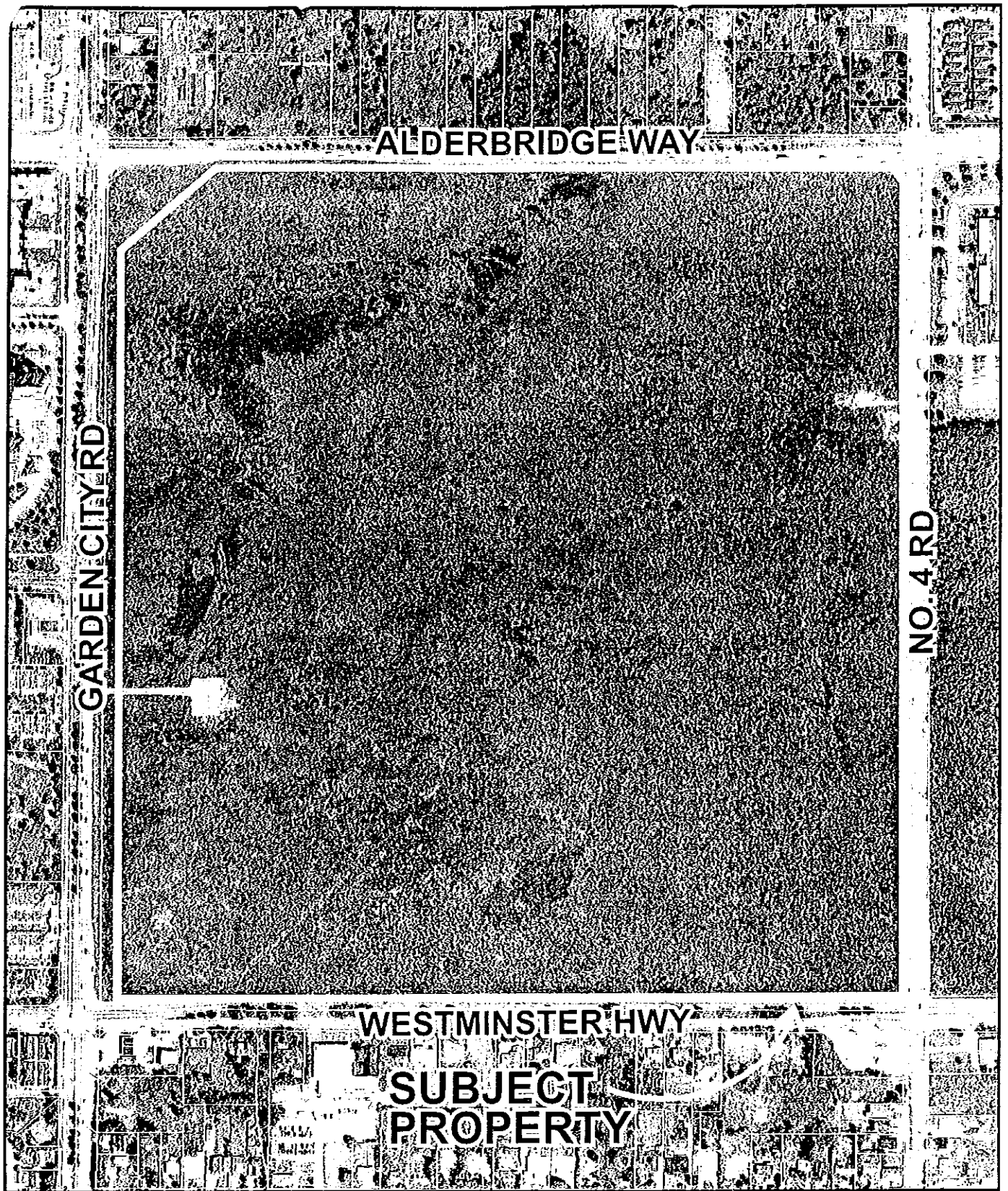


Cecilia Achiam, MCIP, BCSLA  
Senior Coordinator, Major Projects & Development Applications  
(Local 4122)

CA:blg

Attachment 1: Location Map and Aerial Photo





Subject Site:

5555 No. 4 Rd (Garden City Land)

Original Date: 08/30/07

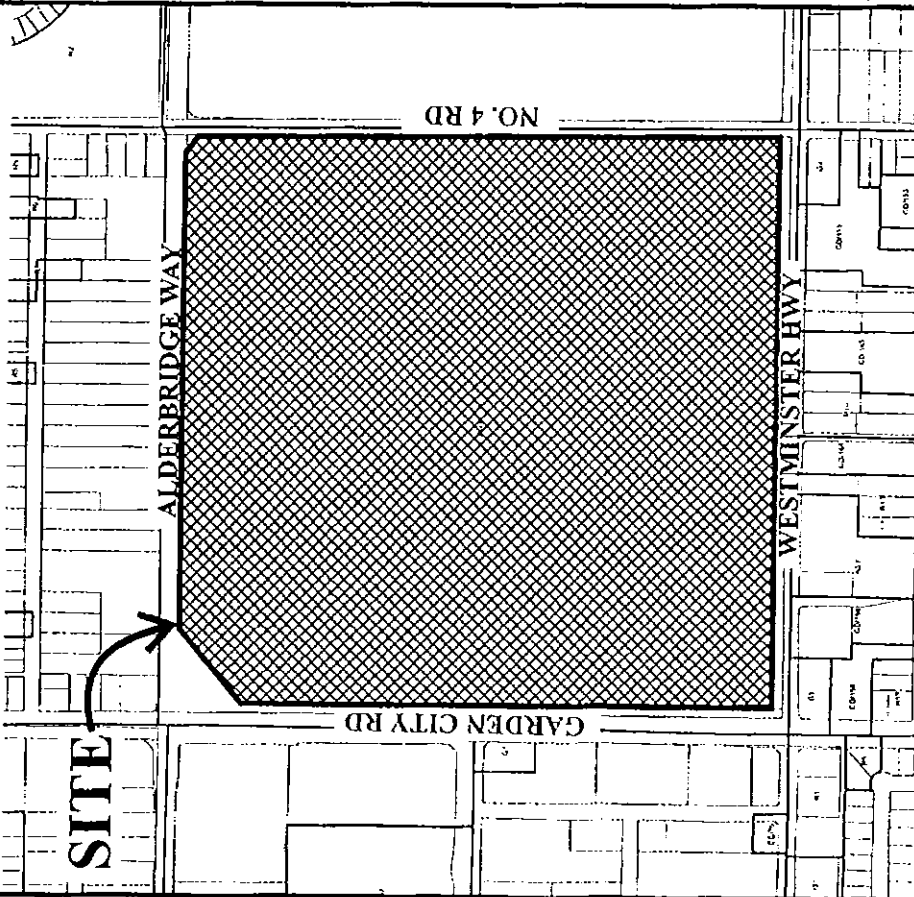
Amended Date:

Note: Dimensions are in METRES



City of Richmond

**SITE**

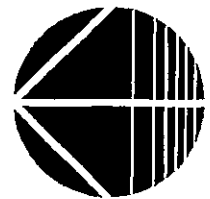


ALDERBRIDGE WAY

GARDEN CITY RD

NO. 4 RD

WESTMINSTER HWY



Subject Site:

5555 No. 4 Rd (Garden City Land)

Original Date: 08/30/07

Revision Date:

Note: Dimensions are in METRES



**City of Richmond**  
Administration

**Memorandum**

**Confidential**

**To:** Planning Committee **Date:** December 4, 2007  
**From:** George Duncan **File:**  
 Chief Administrative Officer  
**Re:** Planning Committee Referral on Garden City Lands to Staff of November 20, 2007

On November 20, 2007, Planning Committee adopted the following referral to staff:  
*That:*

- (1) *the following three requests as outlined in the submission by Carol Day, a Delegate at the November 20, 2007 Planning Committee Meeting:*
  - (a) *contact the Canada Lands Company and the Federal Government for the purpose to offer to purchase the entire Garden City lands for 10 million dollars;*
  - (b) *abandon the application to the Agricultural Land Commission (ALC) to remove the Garden City lands from the Agricultural Land reserve (ALR);*
  - (c) *allow the Memorandum of Understanding (MOU) between the Canada Lands Company, the Musqueam and the City of Richmond to expire,*  
*be referred to outside legal counsel to obtain a legal opinion on the ramifications of Ms. Day's three requests; and*
- (2) *staff first learn the cost associated with outside legal opinion before submitting the three requests to outside legal counsel.*

The Law Section of the City's Law & Community Safety Department obtained a quote from an independent law firm as requested. Staff indicate that the quote is based solely on the wording of the referral from Planning Committee with no additional assignments or direction provided. The value of the quote (see attached) from Staples McDonald Stewart is up to approximately \$10,000 or slightly higher or lower depending on access to any pertinent information that is not presently available.

The time frame to complete the work, if retained by the City, is 3-4 weeks from the date of retaining them to prepare the opinion.

In order to assist Committee's discussions on this matter, staff have also included with this memorandum, other pertinent information/documents. These documents, which are also presented as attachments to this memorandum, include copies of:

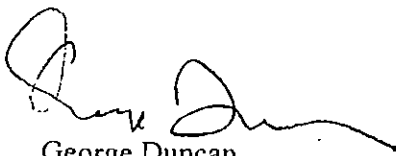
- 1) External legal opinion from Lang Michener LLP (the law firm that does ongoing work for the City on the Garden City Lands file)
  - Tony Knight of Lang Michener LLP represented the City when the results of the MOU negotiations between the City of Richmond, Canada Lands Company (CLC) and the Musqueam Indian Band (MIB) were documented into its present formal MOU format. Staff have from time to time since the signing of the MOU relied on legal guidance from Mr. Knight on the various aspects of managing the implementation of the MOU and to support our ongoing interaction with CLC and MIB, issues analysis, and formulation of advice to Council. The attached external legal opinion is a summation of discussions and legal advice that we have held/received from Mr. Knight from time to time on topics that appear to be most relevant to the information requested in the referral from Planning Committee.

It is clear in the referral that Committee wants outside legal advice on this matter. The purpose of Mr. Knight's work is to assist the ongoing work of the Administration as we prepare to bring the Garden City Lands reports forward this month; however, as he is from an outside law firm and given his familiarity with this matter, I thought Committee may want access to this information in addition to any other legal opinions you may choose to solicit through the referral.

- 2) A letter dated April 24, 2007 addressed to the CAO from Musqueam Legal Counsel asserting Musqueam's position on ownership of the Lands.
- 3) A recent e-mail to Cecilia Achiam, Senior Coordinator - Major Projects and Development Applications, from Musqueam Legal Counsel, possibly sent in reaction to news of the referral and reiterating some of the contents of the letter, but reflecting perhaps a stronger assertion of their position.

Items 2 and 3 above have been provided to familiarize Council with the general attitude and likely intentions of the Musqueam, as it appears that the "what if" factor is an inherent part of the Committee's referral.

The quote from Staples McDonald Stewart is provided in direct response to the referral. Please note that in providing the quote on the cost for external or independent legal services, staff have satisfied the condition of the referral. Therefore, we have not provided a formal staff report and staff recommendation. Accordingly, staff await further direction from Committee on this matter.



George Duncan  
Chief Administrative Officer

GD:acs

Wong, May

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**From:** Kathryn Stuart [kstuart@sms.bc.ca]  
**Sent:** Tuesday, 4 December 2007 9:44 AM  
**To:** Curran, Celeste; Wong, May  
**Subject:** Garden City Lands Legal Services

Hello Celeste:

We estimate that a legal opinion on the issues raised by Council at its November 20th, 2007 meeting would cost approximately \$10,000. This is based on the fact that it is not a straight forward contractual question but involves more complex constitutional matters relating to aboriginal title. The amount quoted may be more or less depending on further facts of which we are not now aware.

We would require 3-4 weeks to complete such an opinion.

Please advise if you require our services in this regard.

Regards, Kathryn

**Lang Michener LLP**  
LAWYERS – PATENT & TRADE MARK AGENTS  
1500 Royal Centre, 1055 West Georgia Street  
P.O. Box 11117, Vancouver, British Columbia, Canada V6E 4N7  
Telephone: (604) 689-9111  
Facsimile: (604) 685-7084

**CONFIDENTIAL MEMORANDUM**

**TO:** George Duncan

**FROM:** Anthony H.S. Knight  
Direct Line: (604) 691-7406  
Direct Fax: (604) 893-2360  
E-Mail: tknight@lmls.com

**DATE:** November 22, 2007 **FILE NO.** 57467-0006

**RE:** ~~Garden City Lands~~ (the "Lands") – Memorandum of Understanding ("MOU") and Purchase Agreement ("PSA") – City of Richmond ("COR") and Musqueam Indian Band ("MIB") – Canada Lands Company CLC Limited ("CLC")

---

What follows is a summary of certain matters arising under the MOU and PSA.

**1. Can COR approach CLC with a request it sell the Lands to COR for \$10,000,000?**

Unless factual matters have changed without notice to us, CLC on its own behalf and MIB through a Limited Partnership continue to be owners each as to an undivided 50% interest in the Lands. CLC holds the 50% interest of MIB in trust for MIB.

Any approach in this regard to sell the Lands would require the agreement of both CLC and MIB.

We expect it is unlikely any sale would be considered by CLC and MIB until it is definitively determined whether the Lands will be removed from the ALR. If the Lands are removed from the ALR, we expect the value of the Lands will rise dramatically.

If it is determined that the Lands will not be removed from the ALR, it is entirely possible that at that time CLC could sell the lands to MIB as we understand that CLC's mandate is to develop land and not hold it long term for investment. This is not an unrealistic scenario as we understand that MIB has recently indicated a willingness to acquire CLC's interest in the Lands.

**2. Can COR abandon the application to remove the Lands from the ALR?**

Under Section 4.1 of the PSA, it was a condition precedent that COR Council resolve to recommend to the ALC that the Lands be removed from the ALR. This condition precedent was satisfied in connection with the first application to the ALC by CLC, but because there is a new application by COR to the ALC, COR Council must reconsider and resolve to make a recommendation to the ALC. If COR Council does not make this recommendation, the PSA is terminated.

Under Section 4.2 of the PSA, it is a condition precedent that the Lands be released from the ALR.

This condition precedent has not been satisfied.

Section 4.6(a) of the PSA provides that each of CLC and the City will be entitled, by written notice to all other parties to the PSA, to extend from time to time the date for satisfaction of this condition precedent for 1 or more periods of time which will not exceed 2 years in the aggregate.

This period has been extended by the parties for 1 year expiring December 31, 2007 and can be unilaterally extended by either CLC or COR until December 31, 2008 without the consent of any other party to the PSA.

In our view, COR does not have the legal ability to withdraw its recommendation to remove the Lands from the ALR while the process for satisfaction of this condition precedent is still ongoing.

Pursuant to Section 3.2, COR is required to employ commercial reasonable efforts to expedite and complete the development approval process (part of which was the Council recommendation), and in our view, if COR were to withdraw the recommendation, this could expose COR to allegations of bad faith and a claim for a breach of contract.

If this condition is not satisfied by December 31, 2007 or, if extended to December 31, 2008 and not satisfied, the PSA is at an end.

**3. What happens to the MOU if the PSA terminates as a result of the non-satisfaction of the condition precedent regarding the release of the Lands from the ALR?**

As a general principal of law, unless the parties otherwise specify, a memorandum of understanding or letter of intent "merges" in the subsequent purchase contract. It is, in effect, superseded and no longer exists unless the parties otherwise specify.

Section 4.6(c) of the PSA provides only Sections 1(22), 1(23) and 2(1) of the MOU continue to be binding on the parties.

Sections 1(22) and 1(23) provide that if certain events do not occur after the Lands are removed from the ALR which are rezoning, increased FAR or approval of OCP amendment, the parties are to meet to renegotiate to give effect to the spirit of the MOU and Section 2(1) provides for a mediation option should the parties reach an impasse.

In our view, the obligation to renegotiate under these Sections only arises where the City has refused to act in rezoning, increasing the FAR or approving the OCP.

Where the PSA is terminated as a result of the failure to have the Lands removed from the ALR because of the actions of the ALC, Sections 1(22) and 1(23) are not relevant and the MOU is expired.

We do not, at this point, have an opinion how a court would decide this issue if there was ever a challenge of this interpretation.

The MOU is drafted in such a way that there are different interpretations possible.

#### 4. Additional Comments

(a) If the PSA is terminated and the MOU has expired:

(i) COR has no interest in the Lands and no right to claim any interest in the Lands, including the right to use the Lands for community uses without the agreement of the owner(s) of the Lands;

(ii) we do not know what course of action MIB will take in the future with respect to the Lands, but MIB has indicated it will assert an interest in the Lands through any remedy available to it; and

(iii) pursuant to the PSA, there is a No Development Covenant registered against title to the Lands. It provides that there is to be no development of the Lands unless COR is assured of its 50% interest of the Lands. If the PSA terminated as a result of COR Council's failure to recommend to the ALC that the Lands be removed from the ALR, this Covenant must be discharged from title to the Lands pursuant to the PSA.

(iv) with respect to MIB:

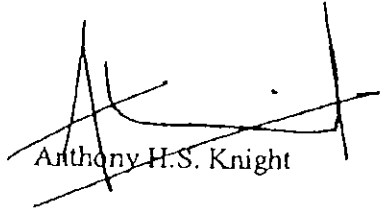
(A) MIB might acquire the Lands from CLC (see our comments in paragraph 1 above).

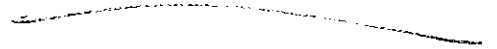
(B) we are aware of a general desire of aboriginal groups to have land they have acquired included in their reserves, and there is a Federal process to accomplish this. If Lands were to attain reserve status, COR would have no jurisdiction regarding development of the Lands.

(C) If MIB were to acquire all of the Lands, they could negotiate with the Province to have the Lands removed from the ALR. We expect MIB has a greater chance of doing this than COR.



We would be please to discuss this memorandum with you further.

  
Anthony H.S. Knight





**MUSQUEAM INDIAN BAND**

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

City of Richmond  
6911 No 3 Road,  
Richmond  
BC V6Y 2C4  
Attn. Mr. George Duncan,  
Chief Administrative Officer

Canada Lands Company,  
Suite 200 Burrard Street,  
Vancouver  
BC V6C 2X8  
Attn. Mr. Doug Kester, Vice President, Real Estate, Western Region

By hand

April 24, 2007

Dear Sirs,

Garden City Lands

I am writing to clarify the position of the Musqueam Indian Band regarding the application being made to the Agriculture Land Commission for exclusion of the Garden City Lands from the Agricultural Land Reserve.

As the result of the negotiations leading to the signing of the Memorandum of Understanding on March 18 2005 and after hearing presentations about the available grounds for exclusion (including community needs) from City officers, the Band supported the application made by Richmond and Canada Lands for exclusion. On a without prejudice basis, the Band is still willing to cooperate in another application for exclusion using, primarily, the community needs grounds for exclusion. Musqueam considers that a strong case can be made for exclusion on such grounds given the Band's traditional ownership of the Lands and its current socio-economic circumstances.

070001\LT\Garden City - April 24, 2007

Please take note that the MOU and Musqueam's cooperation in making the application for exclusion are without prejudice to its legal rights, all of which are expressly preserved. In particular and without limiting Musqueam's legal rights and remedies, Musqueam's position is that it has Aboriginal title to the Lands and that the Lands are "Lands reserved for the Indians" for the purposes of section 91(24) of the *Constitution Act 1867* and so within exclusive federal jurisdiction. I also point out that, without limiting the Crown's fiduciary obligations to the Band, Canada Lands is expressly holding the Lands in trust for the Band as to a 50% undivided interest pursuant to the terms of the MOU and the Joint Venture Agreement between the Band and Canada Lands.

Yours truly,

Kenneth McGregor  
Chief Administrative Officer



**Achiam, Cecilia**

**From:** Jim Reynolds [jreynolds@ratcliff.com]  
**Sent:** Monday, 26 November 2007 11:06 AM  
**To:** Achiam, Cecilia; Gwennie Cheung; Megan Halkett; bandmanager@musqueam.bc.ca; Caroline Cooper; dkester@clc.ca; Howie.Charters@colliers.com; kmithcell@farris.com; Marcia Smith; npottinger@pggroup.com; rasan@clc.ca; Townsend, Ted; Jim Reynolds  
**Subject:** RE: Canada Lands Clips  
**Attachments:** ltr to City of Rmd & Canada Lands Co - Apr 24 07.pdf

Nov. 26, 2007

Cecilia,

Thank you for your messages below. The terms of reference for the outside Counsel are, of course, within the discretion of the City. However, I suggest that you might want to request that he or she consider the constitutional issues relating to the ability of the Province to apply land use control legislation (such as the *Agricultural Land Commission Act* - the "Act") to Aboriginal title lands.

The attached letter dated April 24, 2007 from the Musqueam Band Manager, Ken McGregor, that was hand delivered to Mr.. George Duncan at a meeting on that date, sets out the Musqueam position regarding the application of the Act as follows:

"Please take note that the MOU and Musqueam's cooperation in making the application for exclusion are without prejudice to its legal rights, all of which are expressly preserved. In particular and without limiting Musqueam's legal rights and remedies, Musqueam's position is that it has Aboriginal title to the Lands and that the Lands are "Lands reserved for the Indians" for the purposes of section 91(24) of the *Constitution Act 1867* and so within exclusive federal jurisdiction. "

In support of this position, Musqueam relies, without limitation, upon the decision of the Supreme Court of Canada in *Delgamuukw* [1997] 3 S.C.R. 1010 at paras. 172-183. I also note that the decision of the B.C. Supreme Court released last week in *Tsilhqot'in Nation v. British Columbia* 2007 BCSC 1700 held at paras. 1001 to 1049 that provincial legislation such as the *Forestry Act* controlling the use of land cannot apply to lands to which a first nation has Aboriginal title.

In both the above cases, as in numerous other cases, the courts urged the parties to negotiate in good faith a reasonable arrangement to reconcile the different interests. That is precisely what the parties did in negotiating the Garden City Memorandum of Understanding. Musqueam has repeatedly confirmed that its preference is to negotiate rather than litigate and the Garden City MOU (as well as the recently announced Agreement with the Province over other lands) is proof that it is sincere in this regard. However, as set out above, the MOU and the application to the Commission are without prejudice to the Band's legal rights and it fully reserves all those rights.

If the outside counsel retained by the City would like to discuss Musqueam's position, I would be pleased to assist.

Regards,  
Jim

Jim Reynolds,  
General Counsel,  
Musqueam Indian Band



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.

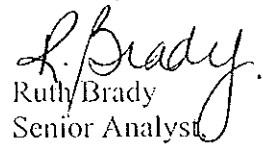
The bottom line is that the lands are owned by CLC, not the federal government, so it will be up to CLC to develop appropriate management and/or disposal strategies. There is no automatic reversion of these lands to the federal government.

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,

A handwritten signature in black ink, appearing to read "R. Brady", with a stylized flourish at the end.

Ruthy Brady

Senior Analyst

Real Property and Materiel Policy Division  
Treasury Board Secretariat

## **Update on Consultant Work:**

Canada Lands Company (CLC) is leading a multiple discipline team with expertise in design site master plan, agriculture and environmental assessment, civil, soils, geotechnical and transportation engineering, recreational and community needs assessment, economic viability and public consultation.

The following are key pieces of work currently underway. The findings will inform the ALR exclusion application by responding to the issues previously raised by the Agricultural Land Commission.

### *Agriculture Capability and Viability*

Pottinger Gaherty Environmental Consultants Ltd. is the lead consulting finalizing a report to assess the agricultural soil capability feasibility and suitability of the Garden City Lands. The findings will form part of the ALR Exclusion Application submission.

The report will summarize what is currently known or understood about the property's agricultural capability, both in its unimproved state and if it was improved with drainage and irrigation, discusses the feasibility of such improvements in general terms, and draws some initial conclusions about the highest and best agricultural use of the property given the crops for which it appears to be most suited.

The viability of using the property for such crops will then examine economic prospects for such cropping, based either on expected prices and available cost of production information in comparison with such cropping in Richmond and in the wider Lower Mainland region.

Additionally, the need for this land to grow such crops will examine in the context of current and expected future market realities, self-sufficiency needs, and the availability of alternate land in the region and will summarize the additional difficulties imposed on the potential agricultural use of this property by virtue of its location beside existing urban uses.

### *Community Needs*

Professional Environmental Recreation Consultants Ltd. is preparing the Community needs assessments for the Musqueam and the City of Richmond. The Musqueam community needs concentrates on social and economic needs, whereas the Richmond study emphasizes open space and public amenity needs. Full details will be provided in the draft ALR Exclusion Application.

If the ALR exclusion is successful, approximately 50% of the Garden City Lands will be acquired by the City for public amenities to address a wide range of community needs in Richmond including provisions of green space, playing fields, community facilities and urban agriculture. The partial list of community needs, in no particular order of priority, identified by various studies noted in the footnote include: major open space, playing fields, community gardens, urban agriculture to address food security, village greens, and a trade and exhibition centre. The public consultation process would likely generate additional public amenity uses. Details on the types

and priority for the various community amenities will be determined at a later date with full public consultation and Council input if the ALR Exclusion is successful.

The consultant report on the Musqueam community needs is being finalized and details will be incorporated into the ALR Exclusion Application.

#### *Urban Planning Context*

Hotson Bakker Boniface Haden Architects is preparing a report summarizing its review of the urban design and planning context of the site. The findings will examine the development context in light of the City Centre Area Plan and the interface with adjacent sites.



## Block Application

### Legislative Background

In accordance with the Agricultural Land Commission Act, applications for exclusion of land from the Agricultural Land Reserve can be submitted by either the “owner” (Section 30) or “local government” (Section 29).

A local government initiated application for exclusion of land within the local governments jurisdiction is often referred to as ‘block applications’.

The main differences for the Garden City Lands application are the requirements (ALC Regulation 171/2002 Parts 6 and 7) under the regulations around notice and a Public Hearing. The application process route as summarized below:

Applicant	Owner-CLC	Local Government -City of Richmond
Applicable Agricultural Land Commission Act	Section 30	Section 29
Public Notice Requirement	Place notices on the property, in the local paper and advise adjacent land owners of its intent for the property	Hold a Public Hearing prior to the submission of the application to the Commission
Process	Must first goes through an internal local government process before forwarding the application to the Commission	Must hold a Public Hearing before submitting the application to the Commission
Commission's Decision Process	Same for both	

## Options to Provide Benefits to Agriculture if Garden City Lands are excluded from ALR

	OPTIONS	DESCRIPTION	PROS/CONS
1	<b>SIGNIFICANT ENDOWMENT WITHOUT ANY STRUCTURE ATTACHED</b>		
		<input type="checkbox"/> Richmond Agricultural Community select a single legacy project and spend the entire amount	<input type="checkbox"/> No long term management needs <input type="checkbox"/> Significant legacy project to create immediate agricultural benefit (Taking care of NOW)
2	<b>LAND PURCHASE</b>		
	a) Purchase land within ALR	<input type="checkbox"/> MOU partners to purchase existing ALR land in Richmond that is under utilized for farming and the City take ownership of the land and agree to rent it out for farming in perpetuity	<input type="checkbox"/> Suitable land for purchase not easily identifiable <input type="checkbox"/> Cannot quantify "agricultural benefit" given that the land is already in ALR <input type="checkbox"/> The rent generated from the lease would be significantly less than other forms of investments thereby limiting the ability for meaningful financial contribute to other projects to promote agricultural viability
	b) Purchase land to add to ALR	<input type="checkbox"/> MOU partners to purchase land in Richmond to add to ALR	<input type="checkbox"/> Non-ALR land cost in Richmond is significantly higher than ALR land. Therefore, the additional acreage feasible for purchase and suitable for farming is limited
3	<b>VARIATION ON THE FRAMEWORK AND FUNDING MECHANISM UNDER DISCUSSION WITH RAAC SINCE MARCH 2007</b>		
	a) Substantial endowment + setting up a non-profit organization	<input type="checkbox"/> MOU partners to provide a substantial endowment for agricultural benefits <input type="checkbox"/> The City offers to manage the investment <input type="checkbox"/> Set up an independent, non-profit organization with its own staff to administer projects deemed to benefit agriculture in Richmond	<input type="checkbox"/> Selection of projects and management of a substantial endowment may be too great a burden on volunteers in the agricultural community <input type="checkbox"/> Provide a sustained income stream which would allow for flexibility to deal with agricultural issues now and in the future
	b) Reduce land requiring ALR exclusion + a reduced endowment	<input type="checkbox"/> Retain a portion of the Public Land in the ALR and incorporate public amenities that can be accommodated with the ALR+ MOU partners to provide a substantial endowment for agricultural benefits	<input type="checkbox"/> Reduce land affected by ALR exclusion and put the land into active agricultural production <input type="checkbox"/> The endowment will still provide flexibility for providing agricultural benefits over the long term <input type="checkbox"/> Endowment will still require management by an appointed entity. The City may be a logical choice to provide the fiscal and investment management for the endowment. <input type="checkbox"/> No immediate decision required for project selection or structuring a non-profit organization to administer either the endowment or projects.



November 28, 2007

Ms. Cecilia Achiam  
City of Richmond  
6911 No. 3 Road  
Richmond, British Columbia  
V6Y 2C1

Dear Cecilia:

**Subject: Garden City Lands**

Further to our many recent discussions this letter will confirm the following Canada Lands Company and its Joint Venture Partner (Musqueam) ("the JV") commitments:

1. To significantly enhance the upcoming re-application to the Agricultural Land Commission to exclude the above lands from the ALR, the JV endorses the City of Richmond making a "Block Application" as provided for under the Act;
2. If the application for the exclusion of the above lands from the Agricultural Land Reserve is successful and subject to the City delivering on its promised interest contribution to this commitment, the JV agrees to establish an endowment fund\* to provide agricultural benefits to the agricultural community of Richmond as a condition of rezoning.

\*Note: at a density of 2.0 FAR, a \$2.00 per buildable square foot "amenity contribution" would result in approximately \$10 million of funding.

We trust this is sufficient for your purposes at this time and look forward to working with you on this challenging and potentially very exciting project.

Yours truly,

CANADA LANDS COMPANY CLC LIMITED

Doug Kester  
Vice President, Real Estate, Western Region

DK/xf

Cc: R. Fasan, Canada Lands Company  
Ken McGregor, Musqueam Indian Band  
Howie Charters, Colliers International