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Confidential Advice for Minister
MINISTRY OF CITIZENS' SERVICES AND OPEN GOVERNMENT
BRIEFING NOTE

Date: February 4, 2013

TOPIC: Jericho Lands

II ISSUE:

Meeting requested by Bob Howald, A/President of Canada Lands Corporate on March 6th, 2013 to discuss the s.17 Proposed attendees are Dan Doyle, Chief of Staff, Colin Hansen, MLA and Kim Henderson, Deputy Minister.

III BACKGROUND:

The provincial Jericho Lands are managed by Shared Services BC on behalf of the Province. The site is bordered on the north by West 4th Avenue, south by 8th Avenue, east by federal government owned lands (53 acres) and west by an unopened road allowance. The Jericho Lands are currently assessed at a value of \$106 million for tax purposes. A current market assessment places the value at up to

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West Point Grey Academy

WPGA operates a private school with a lease in place for most of the buildings on site. The City of Vancouver Parks Department is also a tenant, operating a recreation centre and daycare facility.

The term of the current lease is ten years, expiring June 30th, 2020.

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Currently, there is no option to renew this lease, a condition imposed on the Province by the Musqueam First Nations when the Province sought their input for this lease agreement.

First Nations

The Musqueam, Squamish and Tsleil-Waututh First Nations are impacted by the rights and title issues related to Jericho Lands. At this point, no meaningful consultation process has been initiated between these First Nation groups and the Province.

Federal government

The federal government has declared its adjacent 53 acre site to be surplus, and has entered into discussions with the First Nations consortium (Musqueam, Squamish and Tsleil-Waututh) on a partnership to engage in development of the lands, resulting in a joint venture to redevelop the site with Canada Lands Corporation. This agreement is nearing completion, and as expected,

s.16

The federal government's Jericho Lands are estimated to be valued in the \$250 million range. This number has been used to negotiate with the First Nations consortium for settlement of future claims.

City of Vancouver

The City of Vancouver will require consolidated master planning for the Jericho Lands and the federal site. The anticipated community consultation and rezoning process could take up to two years to complete.

IV DISCUSSION:

The Jericho Lands is a highly sought after high value property with many interested stakeholders. This makes the disposal of this surplus property complicated. Any lease or disposal plans would involve First Nations in any arrangement. First Nations have indicated strong interest and will pursue any movement/decision by the Province on Jericho Lands.

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V CONCLUSION:

- Currently there are tenants on the property with long-term leases; the West Point Grey Academy and Vancouver Parks Department, expiring in 2020;
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- WPGA has occupied the site since 1996 and has long expressed an interest in a longer-term lease or in acquiring the property;
- The Federal government has been in discussions with a First Nations consortium about their property at Jericho Lands;
- The Province has not entered into any formal talks with First Nations or other stakeholders regarding the provincially-owned lands at Jericho
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April 19, 2013

Ref: 166983

Kim Henderson, Deputy Minister
Ministry of Citizens' Services and Open Government
Email: Kim.Henderson@gov.bc.ca

Dear Ms. Henderson:

As you may be aware, the Conseil scolaire francophone de la Colombie-Britannique (CSF) has commenced litigation against the Province of British Columbia, alleging violation of section 23 Charter rights to minority language education. Among the 19 specific locations alleged by the CSF to be in violation is Greater Vancouver, in particular the area west of Main Street, where the CSF has stated a requirement for two additional school sites. The Ministry of Education has worked closely with CSF officials for many years to locate suitable school sites in this area, however success has been limited.

I am aware that, under the Release of Assets for Economic Generation (RAEG) initiative, the Province will identify and market real estate assets that are no longer part of current or long-term plans to deliver services, and identify those assets that could generate economic activity if made available for development. My purpose in writing is to ensure that the needs of the CSF are fully considered in the decisions regarding real estate asset sales by the Province, particularly in view of the potentially negative impact of the Province's defense of the claim should a property be disposed of without such consideration. In that regard, the CSF has expressed specific interest to the Premier in two provincially owned properties on the west side of Vancouver: the Jericho Lands, and the Pearson/Dogwood site on Cambie Street. I understand these properties are now or will soon be available.

I believe it would be in our best interests to meet with you and your senior staff to discuss the potential impact of the litigation on the RAEG initiative, and to provide a list of other locations that have been identified by the CSF. I will ask my staff to arrange for this meeting as soon as reasonably possible.

Sincerely yours,

James Gorman
Deputy Minister



May 28, 2013

Ref: 167658

Roger Hébert
President, Board of Regional Trustees
Le Conseil scolaire francophone de la Colombie-Britannique
180 - 10200 Shellbridge Way
Richmond, BC V6X 2W7

Dear Roger Hébert:

I am writing further to your two letters of April 4, 2013 and my response of April 10, 2013. I apologize for the delay in responding. As you know, for the past several weeks we have been in a writ period of election, and are now in an inter-regnum period without a Cabinet in place to make day to day decisions. We expect a Cabinet to be appointed in the coming days and will brief a new Minister of Education about these important matters upon their appointment.

The Ministry of Education is continuing its work to find a suitable location to build or lease an elementary school on the west side of Vancouver for the Conseil scolaire francophone de la Colombie-Britannique ("CSF"). As you know, finding a site on the west side of Vancouver is a challenging task. Our efforts have focussed on three potential west side sites and has included an examination of any provincially held property in the area.

First, considerable effort has been expended in exploring whether a CSF school can be built in False Creek. While this site was thought not to be feasible because of seismic concerns with the location of the school relative to the Cambie Bridge, I now understand that the City of Vancouver is exploring whether the school site could be positioned in a different location that would ameliorate this risk and that a meeting has been scheduled to review this option. I understand that there is considerable promise that False Creek area may yet be made available for a CSF school.

Second, the Ministry of Education has also been exploring the possibility of constructing a CSF school on the Wesbrook site at the University of British Columbia (UBC). As you know, the CSF and the Ministry have been reviewing possibilities for use of this site for some time, based on the CSF's expressed preference for the location of a school. The Ministry of Education is meeting with UBC in the coming days to further advance these discussions.

Third, the Ministry has also begun exploring the possibility of entering into a long term lease or other arrangement that would allow for the construction of a school on Musqueam Indian Band Land. Ministry staff met recently with members of the Musqueam Indian Band in this regard, and it is expected that the issue will be raised before the Band Council at a future meeting. We

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will maintain contact with the Musqueam to assist with any information they may require in order to consider this possibility.

In addition to considering these three possibilities the Ministry of Education has taken steps to determine whether there is any provincially owned land on the west side of Vancouver that might be used as a school for the CSF. In this regard, Ministry staff have canvassed government Ministries to determine whether any have land that might be used for a school. Ministries contacted include: Citizens' Services and Open Government; Transportation and Infrastructure; Forests, Lands, and Natural Resource Operations; and Health.

The Ministry of Health's Pearson/Dogwood site cannot be made available for a CSF school because of an existing commitment to sell the property to the Vancouver Coastal Health Authority for development of health facilities. There is not surplus area on the site that could accommodate a school without jeopardizing the redevelopment of these necessary health care facilities.

A number of First Nations, including: the Tsleil-Waututh Nation, the Musqueam Indian Band, Squamish Nation, Hulqumintum Treaty Group and Sto:lo First Nation all assert claims in relation to the Jericho lands. The Province of British Columbia has a duty to consult and where required, accommodate First nations whenever it proposes a decision or activity that could impact aboriginal rights and title, claimed or proven. The competing claims of these First Nations adds significant complexity in relation to any dealings with the Jericho lands. In light of this, our best option for the timely resolution of the CSF's school needs lies with one of the three lines of inquiry outlined earlier in this letter.

Finally, you have asked for confirmation that the October 31, 2011 funding announcement for the construction of a CSF elementary school in the False Creek area of Vancouver will be modified to allow for construction of a CSF school on whichever site becomes available. I can confirm that funding approval for a new site acquisition and new elementary school for the CSF on the west side of Vancouver is not contingent on the school being built in False Creek. Although the location of the project may change the Province remains committed to funding this school for the CSF, and will continue to work diligently toward that objective.

The Ministry looks forward to continuing this challenging task with the CSF, with a particular focus on the options most likely to successfully meet the needs of the CSF in the short term.

Sincerely yours,



James Gorman
Deputy Minister

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Michael Robinson
Release of Assets for Economic Generation Program
Ministry of Technology, Innovation, and Citizens' Services

May 3, 2015

**Re Preservation of a site for the construction of a kindergarten to grade 6 school of the
Conseil scolaire francophone de la Colombie Britannique ("CSF") in the provincial
Jericho Lands**

Dear Mr. Robinson:

I write in my capacity as Secretary-Treasurer of the CSF, a province-wide publically funded school district. Formed in 1995, the CSF is British Columbia's only French-language school district, and is responsible for delivering the French-language education that is constitutionally guaranteed in British Columbia pursuant to section 23 of the *Canadian Charter of Rights and Freedoms* ("Charter"). In particular, I write with regard to the disposal process of the provincial Jericho lands, which you addressed at a public meeting I attended on April 29, 2015, held in the gymnasium of the West Point Grey Residents Association.

The CSF's French-language kindergarten to grade 6 programming in Vancouver, west of Main Street

Since 2001, the CSF has operated an elementary program at École élémentaire Rose-des-vents ("RDV"), located on Baillie Street, between West 37th Avenue and West 39th Avenue. This program operates out of a small former school of the Vancouver Board of Education ("VBE"), with an operating capacity of 199 students. This program serves all eligible French-language kindergarten to grade 6 children living in Vancouver, west of Main Street. Since the 2001/2002 school year, enrolment has skyrocketed at RDV, with 352 students enrolled in the 2014-2015 school year and an anticipated increase for the 2015-2016 school year. In addition to increasing elementary enrolment pressure, the construction of a secondary school on the same site, which opened in the 2008/2009 school year, has made continued operation of a single elementary program in Vancouver, west of Main Street, on this site untenable for a number of years.



The CSF's efforts to expand French-language kindergarten to grade 6 education options in Vancouver, west of Main Street

The CSF has been searching for a replacement site in Vancouver, west of Main Street, since 2001. The CSF has tried to secure many replacement site options over the past 14 years, but has been unsuccessful in its numerous attempts, in particular due to lack of funding.

Enrolment at RDV has increased significantly over the years and the school suffers from an overwhelming lack of space that cannot be remedied by the addition of portables or other temporary space, or by makeshift solutions on the current school site, or in proximity to the current school site. The current school site is overused and RDV is operating at 176% of capacity.

The CSF is aware that there is an even larger number of eligible potential students who are not presently attending RDV, and who opt instead to attend schools of the VBE, which are located close to their homes, have better quality facilities, and do not suffer from the same overcrowding issues that are present at RDV. In light of the need for increased capacity in Vancouver, west of Main Street, the CSF requested the construction of two new kindergarten to grade 6 schools in Vancouver, west of Main Street, in its 2010-2011 Capital Plan year. The construction of two new kindergarten to grade 6 CSF schools in Vancouver, west of Main Street, would allow the Baillie Street site to be fully dedicated to French-language secondary programming, and would reduce travel times by dividing the present RDV catchment area in two: a catchment area in Vancouver west of Granville Street, and a catchment area in Vancouver between Main Street and Granville Street.

The Province has recognized the need for two new kindergarten to grade 6 CSF schools in Vancouver, west of Main Street, on a number of occasions. While the Province supported the construction of one of these two new kindergarten to grade 6 schools with the announcement of capital funding on October 31, 2011 for the construction of a new kindergarten to grade 6 school at a site in the Southeast False Creek development, the project has yet to move forward because a site has not been secured.

Despite the CSF's best efforts, matters continue to be untenable at the present RDV site. In response the numerous challenges posed by the constrained site and inadequate facilities in the small building that houses RDV, the parents' advisory council at RDV launched a constitutional challenge in May 2010. In October 2012, a judge of the Supreme Court of British Columbia found that RDV's facilities were "inadequate to meet the standard of equivalence required to satisfy the



constitutional guarantee established by s. 23.”¹ This conclusion was upheld by the Supreme Court of Canada in its recent unanimous ruling released on April 24, 2015.²

The highest court in Canada has found that the constitutional rights of the French-language community living in Vancouver, west of Main Street, are not being respected. Building a new kindergarten to grade 6 CSF school in Vancouver, west of Granville Street, is required.

In light of the dire circumstances in Vancouver, west of Main Street, and in many other communities across the province in which the CSF operates French-language programs, the CSF, the Fédération des parents francophones de Colombie-Britannique, and thirty-three individual parents launched a comprehensive action in June 2010, seeking a new capital funding system that meets the CSF’s unique needs as well as specific relief in twenty-one communities across British Columbia, including Vancouver, west of Main Street.

The provincial Jericho lands would be ideal for the construction of a kindergarten to grade 6 CSF school

The CSF identified the provincial Jericho Lands as a suitable site for the construction of a new kindergarten to grade 6 school in 2001. The CSF understands that your Ministry is currently considering disposition of this site as part of the Province’s Release of Assets for Economic Generation (“RAEG”) program. Based on your presentation at the April 29, 2015 meeting regarding development in the Jericho Lands held at the West Point Grey Residents Association gym, the CSF understands that the Province is preparing to enter into consultations with the Musqueam Nation, the Squamish Nation, and the Tsleil-Waututh Nation regarding the disposal of these lands.

In light of Mr. Justice Willcock’s October 31, 2012 declaration regarding the inadequacy of RDV’s facilities, which was confirmed by the Supreme Court of Canada on April 24, 2015, the CSF has an important and ongoing interest in the provincial Jericho Lands. Your Ministry’s cooperation in preserving part of this site for a kindergarten to grade 6 CSF school is essential. As the Supreme Court of Canada noted in its April 24, 2015 decision: “In the face of competing resource demands and the imperfect realities of day-to-day management of an education system, s. 23 of the *Charter* requires good faith on the part of all interested parties to ensure substantive equivalence for rights holders.”³

¹ *Association des parents de l’école Rose-des-vents v Conseil scolaire francophone de la Colombie-Britannique et al*, 2012 BCSC 1614 at para 157.

² *Association des parents de l’école Rose-des-vents v British Columbia (Minister of Education)*, 2015 SCC 21 at para 57.

³ *Association des parents de l’école Rose-des-vents et al v British Columbia (Minister of Education)*, 2015 SCC 21 at para 67.



In the context of this action, the CSF and its co-plaintiffs sought an injunction in June 2013 for interim relief in Vancouver, west of Main Street. In particular, the CSF sought an order prohibiting the Province from disposing of the provincial Jericho lands. In dismissing that injunction, Mr. Justice Willcock noted that the provincial Jericho lands would remain in the possession of the Provincial Crown even if no injunction were issued.⁴

Given the scarcity of lands that remain available in Vancouver, west of Granville Street, for the construction of a new kindergarten to grade 6 CSF school, any action by the Province with regard to this land must include the retention of 5 acres of this site for the construction of a new kindergarten to grade 6 CSF school. Given the recent finding of the Supreme Court of Canada, the Province's constitutional obligation to provide French-language education to the French-language community living in Vancouver, west of Granville Street, allows for no less.

In light of the concerns outlined above, please confirm that your Ministry will ensure that any disposal of the provincial Jericho lands includes sufficient space for the CSF to construct a kindergarten to grade 6 school. Should you have any questions in this matter, please do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Allison', written over a horizontal line.

Sylvain Allison
Secretary-Treasurer
Conseil scolaire francophone de la Colombie-Britannique

cc Shanna Mason, Assistant Deputy Minister – Capital Planning Branch, Ministry of Education
Joel Palmer, Executive Director – Capital Planning Branch, Ministry of Education

⁴ *Conseil scolaire francophone de la Colombie-Britannique et al v British Columbia (Education)*, 2013 BCSC 1242 at para 126.