

ITEM SUPPLEMENTARY 11  
MANAGER'S REPORT NO. 33  
COUNCIL MEETING 1984 05 07

RE: PROPOSED ACQUISITION OF TEXACO PROPERTY FOR DEVELOPMENT OF  
BARNET MARINE PARK  
(ITEM 16, SUPPLEMENTARY REPORT NO. 27, 1984 APRIL 09)  
(ITEM 1, REPORT NO. 32, 1984 APRIL 30)

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Director Planning & Building Inspection be adopted.

\* \* \* \* \*

TO: MUNICIPAL MANAGER 1984 May 03  
FROM: DIRECTOR PLANNING & BUILDING INSPECTION Our File: 15.003.1  
SUBJECT: PROPOSED ACQUISITION OF TEXACO PROPERTY FOR DEVELOPMENT OF BARNET MARINE PARK

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RECOMMENDATION:

1. THAT this report be received for information purposes.

SUMMARY:

The following report provides Council with information on the legal implications of acquiring the subject property, the circumstances relating to development objectives for the park and the methods of financing a proposed acquisition.

R E P O R T

1.0 BACKGROUND:

At the 1984 April 20 Council meeting a resolution was adopted requesting staff to bring forward a report for Council's consideration on the acquisition of the Texaco Tank Farm lands located on Burrard Inlet as described in Item 4, Municipal Manager's Report No. 55, 1983 September 12.

## 2.0 LEGAL IMPLICATIONS OF ACQUISITION

### 2.1 METHOD OF ACQUISITION

The Municipal Solicitor has reviewed the attached 1976 agreement between the Corporation and Texaco Canada Ltd. and concluded that the Corporation's "right of first refusal" can only be exercised if Texaco desires to sell the property. As Texaco is not a willing vendor, expropriation is the Corporation's only method of acquiring the land.

Council's authority to expropriate property for "pleasure, recreation or community uses of the public" is found in Section 680 and Section 679(1)(a) of the Municipal Act.

### 2.2 CONSEQUENCE OF EXISTING LEASE AGREEMENTS

The Municipal Solicitor has stated that if the property has been leased, both the lessor and lessee have compensable interests. Both the reversionary and leasehold interests must be expropriated if the Corporation wishes to acquire the property free of the lease.

In this regard staff has been advised that Johnston Terminals and Texaco Canada have executed an agreement which provides Johnston Terminals with a firm option to lease the property. Under this agreement they have the option to execute a pre-agreed (completed) lease document. Johnston Terminals has the option to not execute the lease if Municipal and environmental approvals are not obtained.

Therefore, it would be necessary to expropriate the option agreement.

### 2.3 CORPORATION'S RIGHT OF FIRST REFUSAL

The Corporation's right of first refusal is a right to purchase that can be exercised within a 60 day period after Texaco gives notice of its interest to sell the land. The right to purchase is subject to the parties reaching agreement on the price. The right expires 21 years from the date the agreement was signed.

## 3.0 FINANCIAL CONSIDERATIONS

### 3.1 POTENTIAL SOURCE OF FUNDS

The Director Finance has advised that there are three possible sources of funds for the purchase of the property as follows:

Option 1 - External Borrowing - requires a referendum and repayment of loan from general tax levy over a 10 to 25 year period dependent upon market conditions.

Option 2 - Internal Borrowing - from existing reserves such as Capital Works Financing Reserve, Tax Sale Reserve, or Corporate Land Reserve. The repayment conditions would be similar to external borrowing. The Minister of Municipal Affairs has to approve the loan and may ask for a referendum for assent of the electors.

Option 3 - Tax Levy - the purchase price would have to be temporarily financed as per Section 344 of the Municipal Act and repaid from increased tax levy over several years. There is no need for the assent of the electors, but the limit is restricted by population to about \$4.7 million. This option is currently not available, as it is being utilized for the Kensington BNR Overpass.

### 3.2 FINANCIAL IMPACT

The financial impact of Options 1 and 2 are shown below for various amounts of borrowing.

Loan Amount (\$)	1,000,000	5,000,000	10,000,000
Annual Loan Repayment (say 15 years @ 12%)	146,824	734,121	1,468,242
Annual effect on median home (1984 \$)	0.90	4.52	9.04
Total Repayment Including Interest (\$)	2,202,360	11,011,815	22,023,630

### 3.3 ASSESSED VALUE AND PROPOSED IMPROVEMENTS

The property (including the waterlot) is currently assessed at about \$2.1 million and further improvements of about \$4.4 million are proposed by Johnston Terminals. In the absence of firm appraisal of the property and the costs associated with expropriating possible reversionary and leasehold interests we have not attempted to estimate the total cost of expropriation.

It should be recognized that the basic thrust to date has been to request Texaco to reconsider their position and make their lands available for sale or lease (i.e. negotiate). Given their unwillingness to do so, Council is now faced with considering expropriation. Given the magnitude of the potential costs of such an action, a full appraisal of the property must be undertaken and all costs more precisely determined and reviewed within the context of the Corporation's overall objectives.

The information at hand is sufficient, however, to place the question of the possible expropriation in perspective and enable Council to determine an appropriate course of action. It is imperative that 'hard costs' be determined to confirm initial conclusions if Council decides to proceed with expropriation.

### 3.4 FUTURE IMPLICATIONS

The 1984-1988 Capital Budgets shows about \$27.3 million is to be financed out of the reserves referred to in Sec. 3.1. There are also \$33.3 million of projects for which the source of funding is not known, but could also be financed from these reserves, thereby increasing the overall demand to \$60.6 million. At the end of 1983, the combined balance of the three aforementioned reserves was \$28.6 million. Funding of the Texaco purchase may cause some of the programs outlined in the Capital Budget and other opportunities as they arise to be placed in a lower priority position and/or postponed.

### 3.5 TAX REVENUES

As stated in Section 3.3, the property is currently assessed at about \$2.1 million and further improvements of \$4.4 million are proposed by Johnston Terminals. If the property were purchased as is, the Municipality would lose about \$26,000 in tax revenues each year, and if the improvements were completed, the loss would total about \$83,000 per year.

## 4.0 PARK DEVELOPMENT PROPOSALS

### 4.1 JUSTIFICATION FOR ACQUISITION

The Director Recreation and Cultural Services has stated that the acquisition of the Texaco property for park purposes would be a major positive step toward providing the type and amount of park space warranted on the waterfront, while at the same time eliminating what must be considered as a distraction from the present park setting. There are three reasons why the land acquisition is favoured:

- a) Much of the currently allocated parkland is in narrow linear strips that are suitable for development as trails, beaches and picnic sites, but will not adequately accommodate the development of recreational components that would be major sources of attraction. A large continuous property is required for such supplementary facilities as tennis courts, informal playfields and food services outlets.
- b) By converting the land into park, the two currently segregated sites could be united into one contiguous block allowing more freedom of pedestrian movement thus enhancing the waterfront park experience.
- c) The Texaco property is currently serviced with facilities which are necessary within the parklands. Acquisition would reduce park development costs, while also increasing development possibilities.

### 4.2 DEVELOPMENT PROPOSALS

Currently the Barnet Marine Park proposal provides excellent opportunities for passive enjoyment of the waterfront including beach activities, walking and picnicing. The limited land area cannot however support the establishment of active recreational facilities or other specialized recreational facilities which are necessary to provide optimum use of a waterfront park. It is these supplementary features that are required to balance the passive park uses and provide a key focal point for the entire park. The Texaco property would be required for such development and, in fact, would facilitate development because of the existing amenities. For example, the warehouse could be converted to a marine nature centre, washroom facilities, food services outlet, maintenance building or clubhouse for the Sailing Club proposed elsewhere within the park. The wharf could be reconstructed and extended to provide not only water skiing, docking and fishing facilities, but also would be a passive social area with excellent views of the waterfront.

#### 4.3 PROJECTED DEVELOPMENT COSTS

##### a) Texaco Site

Depending on the final decisions, staff estimate that the conversion to parkland with facilities will cost between \$2 - 3.5 million, including the removal of unwanted oil storage facilities and land restoration. An open passive park setting with no facilities could be completed for approximately \$0.5 million.

##### b) Existing Park Land

In comparison, approximately \$0.9 million has been spent to date in the existing core area with a further \$0.2 million estimated to be required to complete development. The development of the current master plan proposal for the lands west of the Texaco property is estimated to cost an additional \$2.3 million. Again, this is primarily a passive park setting with only minimal facilities.

This latter estimate would be greatly reduced if development on the Texaco property went ahead because of the services and access on the Texaco site.

#### 4.4 DEVELOPMENT PRIORITY

The Parks and Recreation Department does not have any funds allocated within the five-year Capital Budget for the further development of the existing Barnett Marine Park. Currently, it is proposed to consider further funding of Barnett Marine Park development in 1988. If the Texaco Lands were acquired and developed for park, funding could be scheduled over a ten to twenty-year period, starting in 1988 or earlier as priorities and funds are established.

#### 5.0 PUBLIC HEALTH CONCERNS RELATING TO USE OF PROPERTY FOR MUNICIPAL PARK

The subject property has been used for numerous years for the storage and distribution of petroleum products. The Chief Public Health Inspector has advised that there is a public health concern regarding the unknown concentration of toxic chemicals within the ground surface of the subject site. Prior to the Corporation making a decision to acquire and develop the Texaco Tank Farm area for park use, he has stated that it is imperative that the ground concentration of toxic chemicals be determined.

In reviewing potential development costs for park use the Chief Public Health Inspector has recommended that the cost for removal of approximately two feet of soil from the site and its proper disposal be included (the Parks and Recreation Department's estimate for development costs includes this provision). The actual amount of soil removal can only be determined after chemical analysis of the ground soil samples. Depending on the concentration of toxic chemicals within the ground soil, disposal of the excavated earth may be a problem.

The Environmental Health Department is prepared to commence sampling in order to determine the ground concentration of toxic chemicals in the event of the Corporation making a decision to acquire the subject site for inclusion in the Barnett Marine Park. They would of course, require permission of Texaco Canada Ltd.

Re: Proposed Acquisition of Texaco Property for  
Development of Barnet Marine Park  
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6.0 TEXACO'S DEVELOPMENT RIGHTS AND TRANSFER OF THESE RIGHTS

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Council has requested clarification on Texaco's right to develop the subject property and to transfer these rights as a consequence of the previous acquisition agreement.

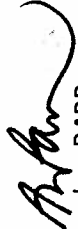
It is clear that, when lands were acquired for park use in 1976, provision was made for the continued operation and expansion of the facilities by Texaco. A right of first refusal was obtained which could be exercised if Texaco gives notice of its interest to sell the land. Provision was also made in the event of any transfer from Texaco to any subsidiary or associated company; that any such transfer shall contain a covenant which shall bind such subsidiary or associated company obtaining title, to grant the Municipality a like first right to purchase.

The only avenue the Municipality has to exercise this right of first refusal is if Texaco sells the property. The Municipality has stated that the intent of this agreement should also apply to the lease of the property. However, this interpretation of the Municipal intent is not legally founded.

It is also clear on the attached copy of the Barnet Marine Park Development Plan (Figure A) that provision was made for the potential expansion of the tank farm.

The foregoing is submitted for information purposes.

PB/mcb  
Attach.

  
A. L. PARR  
DIRECTOR PLANNING &  
BUILDING INSPECTION

cc: Director Recreation & Cultural Services  
Director Finance  
Director Administrative & Community Services  
Director Fire Services  
Chief Public Health Inspector  
Municipal Solicitor

BY A 365  
 BY A 366  
 BY A 3787

SUBSTITUTE FORM A - PARTICULARS

- (a) Address of person entitled to be registered if different from that shown in instrument.  
*for change of name of McCall*  
*Frontalier Ave Co. 519 2 574*  
*7 2 54*
- (b) Full name, postal address and telephone of person presenting instrument for registration.  
*Robert J. ...*  
*11149 Edinboro ...*  
*Prunby*
- (c) Declared Value:  
 \$1,100,000.00
- (d) Request delivery of Duplicate C. T. Yes/No
- (e) *Robert J. ...*  
 Signature of Applicant  
 (Solicitor for Grantee)

THIS INDENTURE made the 6th day of February, 1976.  
 IN PURSUANCE OF THE "SHORT FORM OF DEEDS ACT"

BETWEEN:  TEXACO CANADA LIMITED, a body corporate incorporated under the laws of Canada and having its registered office in British Columbia at 1177 West Hastings Street, in the City of Vancouver, in the Province of British Columbia;

AND:  THE CORPORATION OF THE DISTRICT OF BURNABY, 1349 Canada Way, in the Municipality of Burnaby, in the Province of British Columbia;

(hereinafter called "the Grantor")  
 OF THE ONE PART

WITNESSETH that in consideration of and for the sum of Ten Dollars (\$10.00) and other good and valuable consideration now paid by the Grantee to the Grantor (the receipt whereof is hereby by it acknowledged) the Grantor GRANTS unto the Grantee, its successors and assigns FOREVER:

ALL AND SINGULAR that certain parcel or tract of land and premises situate in the Municipality of Burnaby, in the Province of British Columbia and described as:

Set out in Schedule "A" hereto  
 (hereinafter called "the Lands") or stamped on the application

3767 1195.00

NEW WESTMINSTER  
 1976  
 1195.00  
 3767

44365

- 2 -

TOGETHER with all buildings, fixtures, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed, or appurtenant thereto and the estate, right, title, interest, property, claim and demand of the Grantor in, to or upon the said Lands.

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns, to and for its sole and only use forever; SUBJECT NEVERTHELESS to the reservations, limitations, provisos, and conditions expressed in the original grant thereof from the Crown, and subject to all taxes, rates and local improvement assessments whether assessed against said Lands now or subsequently to be assessed and all building restrictions (if any) to which the said Lands or any part thereof are at the date of this indenture subject;

AND SUBJECT FURTHER TO:

1. The Grantor reserves unto itself for the benefit of:

Lot One (1) of  
District Lot Two Hundred Fourteen (214),  
Group One (1),  
New Westminster District,  
Plan 49510

(hereinafter called "Lot 1")

the full, free and uninterrupted right, liberty, right-of-way and easement for the Grantor, its servants, employees, agents and all others, the licensees of the Grantor from time to time and at times to enter, use, labour, go, return, pass and repass over, along and upon all that portion of the Lands outlined in brown and more particularly shown on the Explanatory Plan of easements of a portion of Lots 1 and 2, which Explanatory Plan was certified by D. T. Simr <sup>3</sup> on the 24th day of September, 1975 and filed in the New Westminster Land Registry Office herewith under NO. 49652, a copy of which is hereto annexed as Schedule "B" and hereinafter referred to as the "Explanatory Plan", to lay down, construct, install, operate, maintain, alter, enlarge, repair, renew and replace over, through and upon the aforesaid easement a road or way of asphalt, concrete or similar material together with any and all necessary ditches, culverts and drainage systems and to pass and repass over the aforesaid easement with or without ladened or unladeden vehicles or equipment.

The Grantee covenants and agrees not to excavate, remove, install, erect or permit to be excavated, removed, installed or erected upon or under the said easement any earth, pit, foundation or other works, structures, improvements or installations, or do or permit to be done any other act or deed which might interfere with the said easement hereinbefore granted.

2. The Grantor further reserves unto itself for the benefit of the said Lot 1 the full, free and uninterrupted right, liberty, right-of-way and easement for the Grantor, its servants, employees, agents and all others, the licensees of the Grantor from time to time and at all times to enter, use, labour, go, return, pass or repass over, along and upon all that portion of the Lands outlined in red on the Explanatory Plan hereto attached as Schedule "B" and filed in the New Westminster Land Registry Office herewith, to construct, maintain, repair, enlarge, renew, alter or replace the improvements situate on the Grantor's lands PROVIDED THAT in the event the Grantor disturbs, damages, or otherwise injures the improvements and landscaping on the aforesaid easement, it will, at its expense, repair or replace such improvements and landscaping to the state existing prior to the use of the easement by the Grantor.

3. The Grantor reserves unto itself for the benefit of:

Lot Three (3) of  
District Lot Two Hundred Fourteen (214),  
Group One (1),  
New Westminster District,  
Plan 49510



44000

an easement in perpetuity for the encroachment of the footings of accessory dock facilities and other appurtenances pertaining to the accessory dock over those portions of Lot 2 shown outlined in purple on the Explanatory Plan prepared by D. T. Simmons on the 24th day of September, 1975, and attached hereto as Schedule "B" and filed in the New Westminister Land Registry Office herewith, for the purpose of constructing, maintaining and using an accessory dock and other appurtenances pertaining to the accessory dock constructed (and for any replacement and alteration to such dock) on Lot 3.

For the purposes of this easement, "accessory" shall have the meaning of "ancillary to the use of the adjoining Lot 1 retained by the Grantee".

The Grantor covenants and agrees to save the Grantee harmless and to indemnify and keep indemnified the Grantee from all claims, demands, damage, costs, expenses, charges and taxes which may be sustained or incurred by the Grantee from the construction, use, maintenance or existence of the encroachment for dock facilities.

The Grantee covenants and agrees not to excavate, remove, install, erect or permit to be erected upon or under the aforesaid easement area granted in this clause, any earth, pit foundation or other works, structures of installation or do or permit to be done any other act or deed which may interfere with the use of or the construction of dock facilities constructed on Lot 3.

4. The Grantor grants to the Grantee, its servants, agents, workmen and assigns for the benefit of Lot 2 an easement over that portion of Lot 1 outlined in green on the Explanatory Plan prepared by D. T. Simmons on the 24th day of September, 1975, and filed in the New Westminister Land Registry Office herewith, a copy of which is hereto attached as Schedule "B", to pass and repass in motor vehicles or other vehicles laden or unladen.

5. The Grantee covenants and agrees with the Grantor that, for the benefit of Lot 1, it will not construct, install, erect, or build on that portion of Lot 2 outlined in blue on the said Explanatory Plan any buildings, improvements, structures or installations; provided however, that this restrictive covenant is not to be applicable to parkland facilities, such as landscaping and trails, and is merely for the purpose of conforming to the setback regulations required for the installation of improvements on Lot 1. It is mutually agreed between the Grantor and Grantee that the covenant herein contained shall be a covenant running with the land and shall be a charge and encumbrance against Lot 2.

AND THE GRANTOR covenants with the Grantee that it has the right to convey the Lands described in Schedule "A" to the Grantee notwithstanding any act of the Grantor; and that the Grantee shall have quiet possession of the Lands free from all encumbrances save as aforesaid.

AND THE GRANTOR covenants with the Grantee that it will execute such further assurances of the said Lands described in Schedule "A" as may be requisite.

AND THE GRANTOR covenants with the Grantee that it has done no acts to encumber the said Lands described in Schedule "A" save as aforesaid.

AND THE GRANTOR releases to the Grantee all its claims upon the said Lands save as aforesaid.

AND THE GRANTOR further grants unto the Grantee, in the event the Grantor desires to sell, convey or dispose of all or any portion of Lot 1, a right of first refusal to purchase all or any portion of Lot 1 for a period of sixty (60) days from the receipt by the Grantee of the intent to sell by the Grantor and if after the expiration of the 60-day period the Grantor and the Grantee have not agreed on the terms of a sale to the Grantee, the Grantor may offer Lot 1 or any portion of Lot 1 for sale on the open market PROVIDED that it is mutually agreed that this right of first refusal shall be null and void if the Grantee does not exercise this right of first refusal within the period of twenty-one (21) days less one (1) day from the date hereof.

REMOVED FIRST REFUSAL

RIGHT OF FIRST REFUSAL

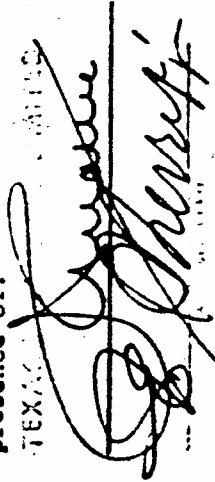
refusal will not apply to any transfer from the Grantor to any subsidiary or associated company or to a sale or transfer to Her Majesty the Queen in Right of Canada or in the Right of the Province of British Columbia or to any Crown Corporation or agency; and that any such transfer from the Grantor to a subsidiary or associated company shall contain a covenant which shall bind such subsidiary or associated company obtaining title, to grant to the Grantee a like first right to purchase.

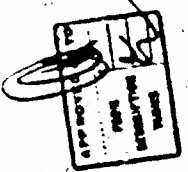
THE GRANTOR agrees that the consideration of One Million, One Hundred Thousand Dollars (\$1,100,000.00) includes a settlement of any and all claims for injurious affection to Lot 1 and Lot 3 which might arise or have arisen by reason of the sale of Lot 2 to the Grantee.

THE GRANTEE covenants and agrees to assume the obligations contained in the easement agreements filed in the New Westminster Land Registry Office under #G42476 and #G42477 in favour of Her Majesty the Queen in Right of Canada and to indemnify and keep indemnified the Grantor from any and all claims, demands, losses, damages, costs and expenses which may be sustained or incurred by the Grantor by reason of the breach of any provision of the said easement agreements.



IN WITNESS WHEREOF the Grantor and Grantee have hereto caused their respective common seals to be hereunto affixed in the presence of their respective proper signing officers duly authorized in that behalf the day and year first above written.

The COMMON SEAL of the GRANTOR was hereunto affixed in the presence of:

TEXAS  
  
MAYOR



The COMMON SEAL of the GRANTEE was hereunto affixed in the presence of:

  
MAYOR  
  
DEPUTY CLERK

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1" = 400' FB  
84 Apr. 03

NORTH

# RELATIONSHIP OF TEXACO TANK FARM TO BARNET MARINE PARK.

- LEGEND**
- PLANTING
  - LAWN
  - TETHERBALL
  - PICNIC CIRCLE
  - BICYCLE PATH
  - PEDESTRIAN PATH

