



# Corporate Report

NO: R195

COUNCIL DATE: October 6, 2008

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## REGULAR COUNCIL

TO: Mayor & Council DATE: October 2, 2008  
FROM: General Manager, Engineering FILE: 5280-01  
SUBJECT: Amendments to Policy on Habitat Replacement on City Land

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## RECOMMENDATION

The Engineering Department recommends, related to City Policy No. P-15, which addresses the potential for habitat replacement on City land, that Council approve amendments as underlined in Appendix I to this report.

## BACKGROUND

On September 11, 2006, Council adopted the recommendations of Corporate Report No. R185 (attached as Appendix II), which acted to bring into effect Policy No. P-15 (the "Policy"). The Policy allows for the use of certain City lands for the relocation and/or replacement of environmental habitat from adjacent lands subject to certain conditions being satisfied. Since adoption of the Policy, ten (10) licenses have been granted for use of City land in habitat replacement. Currently, there are six (6) more applications that are being considered under this Policy.

## DISCUSSION

Based on experience with the Policy to date, two clauses in the Policy need to be further refined as discussed below.

### A. Compensation Formula

Section 1.2 of the Policy provides the basis upon which compensation, which is to be paid to the City, is calculated. Clause 2 of this section starts off with the words "*100% of the value of the City land . . .*" The intent of this statement was for the benefiting entity to pay an amount equivalent to the loss in value of the City land as a result of the habitat works being constructed on the City land. To ensure that this intent is properly conveyed the words in Clause 2 should be amended to read "*100% of the **loss in market** value of the City land . . .*"

## **B. Use of "Dedicated" Land for Habitat Replacement**

Section 1.0 (Policy Summary) discusses the use of "land owned by the City" for habitat compensation works. Frequently, through the development approval process, lands that are to be dedicated to the City as part of the development are identified as being suitable for this purpose. Consequently, to provide clarification that while the lands may not yet be owned by the City, if they are to be dedicated as a requirement of the development approval process, such lands can be used for habitat replacement purposes but their use for habitat replacement falls under the Policy. On this basis, it is recommended that Section 1.0 (policy summary) include the statement, "**including lands to be dedicated through the development approval process,**" after "land owned by the City."

## **C. Use of City Land Voluntarily Dedicated Through the Development Approval Process**

To add further clarification to the intent of Policy P-15 noted in Section B of this report, there are two types of land "dedications" triggered by development applications:

### **1. Compulsory dedications**

These dedications, which are mandated by such things as statutes, policies, regulations, by-laws, etc., must be provided to the City, without compensation, as a condition of the development approval process.

### **2. Voluntary dedications**

These dedications are not required as a condition of the development approval process and are being provided by the applicant on a voluntary basis.

To distinguish between compulsory and voluntary dedications, and to ensure that a fair and equitable approach is used when applying Policy P-15, it is recommended that for compulsory dedications, all aspects of the Policy, including compensation for the use of City land (Section 1.2), be applied.

For land dedicated on a voluntary basis and being used by the applicant for habitat relocation, these applicants should be exempt from the compensation for use of City land requirements (Section 1.2), but still be required to provide payment for the monitoring and maintenance of the habitat works to be installed. Subsequent applicants requesting to use voluntarily dedicated land for habitat relocation purposes would be subject to all of the requirements of Policy P-15, including Section 1.2 (i.e. payment of compensation for use).

To achieve the proposed distinction between the requirements for voluntary versus compulsory dedications, it is recommended that the following statement be added as Section 1.3 of Policy P-15.

- 1.3 Lands dedicated to the City on a voluntary basis that are to be used by the dedicating developer for habitat replacement purposes are subject only to the monitoring and maintenance component of the Policy, and would be exempt from the payment of compensation as noted in Section 1.2. Subsequent users of those previously dedicated lands would be subject to all of the provisions of this Policy, including the compensation requirement for the use of City land for habitat replacement purposes as noted in Section 1.2.**

## CONCLUSION

Based on the above discussion, it is recommended that Council approve amendments to the Policy as underlined on the version of the Policy attached to this report as Appendix I.

Vincent Lalonde, P.Eng.  
General Manager, Engineering

VL/WP/mpr

### Appendices:

- I. Policy P-15 including recommended amendments, highlighted with underlining
- II. Corporate Report No. R-185, dated September 11, 2006, with attached Policy P-15



# CITY POLICY

No. P-15

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<b>REFERENCE:</b>	<b>APPROVED BY:</b> CITY COUNCIL
	<b>DATE:</b> <i>SEPTEMBER 2006</i>
	<b>HISTORY:</b> <i>Revision #1, September 2008</i>

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**TITLE:       COMPENSATION FORMULA AND PROTOCOL FOR  
HABITAT REPLACEMENT ON CITY LAND**

## 1.0 POLICY SUMMARY

Where appropriate, and as determined by the General Manager, Engineering or General Manager, Parks, Recreation and Culture, and subject to City Council approval, an applicant may relocate habitat enhancement requirements from the applicant's land to land owned by the City, **including lands to be dedicated through the development approval process**, upon the following conditions:

### 1.1 Guidelines for Substitute Environmental Land

The substitute City land, which may include dedicated road or park area, must first be acceptable to the approving governmental agency and generally possess appropriate environmental characteristics for the intended use.

### 1.2 Compensation Formula

Compensation will be calculated by the Realty Services Division of the Engineering Department and will be based on the higher of the two appraised market values as determined by an accredited appraiser using the following two valuation approaches:

1. The increase in the value of the applicant's land based on the benefit to the development as a result of locating the habitat works away from the development site (Lift in Value); and
2. 100% of the **loss in market** value of the City land being used for habitat replacement and/or environmental works. (However, the land will remain in City ownership.)

### 1.3 **Lands dedicated to the City on a voluntary basis that are to be used by the dedicating developer for habitat replacement purposes are subject only to the monitoring and maintenance component of the Policy, and would be exempt**

**from the payment of compensation as noted in Section 1.2. Subsequent users of those previously dedicated lands would be subject to all of the provisions of this Policy, including the compensation requirement for the use of City land for habitat replacement purposes as noted in Section 1.2.**

#### **1.4 Mechanism for Securing Tenure**

A licence of occupation will, on terms determined by the City and approved by City Council, be granted to the applicant for the use of City land for environmental habitat purposes. The licence document, among other things, will describe the scope of work and will include a survey sketch plan and other appropriate drawings of the site works to be undertaken, including habitat plantings. The licence in most instances will be for a term of five years after construction of the works is fully completed, and must be in accordance with the terms and conditions recommended by the senior governmental approving agency. The licence term will provide sufficient time to construct the works, establish associated planting areas, and complete the maintenance monitoring period as authorized by the senior governmental agency (e.g. Fisheries & Oceans Canada, provincial Ministry of Environment, Agricultural Land Commission, etc.).

#### **1.5 Habitat Replacement Construction and Future Maintenance and Monitoring**

The applicant will be solely responsible for the cost to construct, monitor, and maintain the mitigation works within the City-owned property for the term of its licence. The City will also require an appropriate lump sum payment from the applicant, as determined by the City, for payment to the responsible City department to cover the reasonable cost of ongoing monitoring and maintenance of the habitat area, including the existing plantings and plant replacement as required beyond the licence term.

#### **1.6 Application Fee**

An application fee of \$2,500 (as of 2008) (inclusive of GST) per project will be required for the determination of the compensation payable, preparation of the licence documentation, and staff administration costs during the term of the licence. It is anticipated that City fees for service, as contained within By-law 14577, will be adjusted from time to time to reflect the City's increased costs. This Application Fee is in addition to the compensation payable to the City, the cost to construct the habitat mitigation works, and the lump sum ongoing maintenance fee, as referred to in Section 1.4 of this policy.



APPENDIX II

**Corporate  
Report**

NO: RI 85

COUNCIL DATE: Sept. 11/0

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**REGULAR COUNCIL**

TO: Mayor & Council  
DATE: August 31, 2006

FROM: General Manager, Engineering  
General Manager, Parks, Recreation and Culture  
Acting General Manager, Planning & Development  
FILE: 5280-01

SUBJECT: Proposed City Policy - Habitat Replacement on City Land

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**RECOMMENDATIONS**

That Council:

1. approve the attached proposed City Policy No. P-15 (Appendix D referred to as the "Compensation Formula and Protocol for Habitat Replacement on City Land"); and
2. authorize the City Clerk, in accordance with Section 194 of the Community Charter, to introduce an amendment to By-law No. 14577 to include the Habitat Replacement on City land application fees of \$2,400 (inclusive of GST) as outlined in Appendix I.

**BACKGROUND**

As the City is rapidly developing, there is an increasing demand for lands where environmental mitigation can be provided to offset impacts to other lands where developing is occurring. In some cases better development and environmental opportunities can be achieved by consolidating local environmental features on more appropriate areas than those available on the subject development site(s). The City owns a number of properties, including dedicated roads and parkland with existing environmental features that can be used for this purpose, and it is expected that the development industry, as well as governing agencies undertaking major capital works, will have a strong interest in using some of these City lands for environmental habitat compensatory works.

## DISCUSSION

Under this proposal, habitat compensatory works would generally be constructed by the developer on City-owned lands, as approved by senior environmental agencies and appropriate City departments.

To ensure that the City complies fully with the requirements of the Community Charter and does not confer a benefit or provide assistance where habitat works are to be constructed on City land, the developer would be required to pay compensation based on the highest of the following two valuation approaches:

1. increase in value to the development lands, based on the Before and After appraisal method, due to the relocation of the habitat works elsewhere and the resultant improved developability; or
2. 100% of the value to the City land being utilized for the habitat works.

If the habitat replacement proposal is approved, a licence of occupation will be granted to the applicant for the use of City land for environmental habitat purposes. The licence in most instances would be for a term of five years after completion of construction of the works, being sufficient time to maintain and monitor the planting areas to ensure that they are fully established. In addition to paying compensation to use the City land and pay the cost to construct the habitat mitigation works, the developer would also be required to pay all other related costs, including a staff administration fee of \$2,400 per project (Recommendation #2 and point 1.5 of the draft Policy). This fee is required to cover the cost of determining the compensation payable, preparation of the licence documentation, and ongoing administration over the term of the licence.

The developer would be solely responsible for constructing, monitoring, maintaining (including replanting if required) of the actual mitigation works for the entire term of the licence. For the period thereafter, the City would require an appropriate lump sum payment to cover the reasonable cost of ongoing maintenance of the new habitat area.

The income generated from the use of the City land would be placed within the appropriate City department funding account (e.g. City land sales, parkland acquisition, etc.).

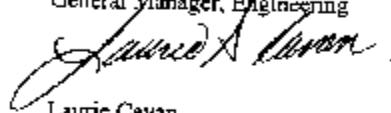
## CONCLUSION

The recommended City Policy P-15 (Appendix I) entitled "Compensation Formula and Protocol for Habitat Replacement on City Land is a business-like approach to making appropriate City-owned lands, including dedicated roads, available for habitat compensatory works. These works are typically initiated as a requirement of approval for the development of lands within the same watershed. Provincial and federal agencies responsible for environmental matters often see the use of City lands as more secure and appropriate locations for proposed habitat mitigation works. The City's environmental stewardship responsibilities at the local level will also provide greater confidence to the

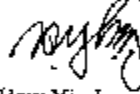
various environmental agencies. This recommended policy is seen as a fair and consistent way of ensuring that appropriate compensation is paid by developers for the use of City lands, including dedicated roads, for replacement habitat.



Paul Ham, P. Eng.  
General Manager, Engineering



Laurie Cavan  
General Manager, Parks, Recreation and Culture



How Yin Leung  
Acting General Manager  
Planning and Development

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Appendix I. Draft City Policy "Compensation Formula and Protocol  
for Habitat Replacement on City Land"





plantings. The licence in most instances will be for a term of five years after construction of the works is fully completed, and must be in accordance with the terms and conditions recommended by the senior governmental approving agency. The licence term will provide sufficient time to construct the works, establish associated planting areas, and complete the maintenance monitoring period as authorized by the senior governmental agency (e.g. Fisheries & Oceans Canada, provincial Ministry of Environment, Agricultural Land Commission, etc.)

**1.4 Habitat Replacement Construction and Future Maintenance and Monitoring**

The applicant will be solely responsible for the cost to construct, monitor, and maintain the mitigation works within the City-owned property for the term of its licence. The City will also require an appropriate lump sum payment from the applicant, as determined by the City, for payment to the responsible City department to cover the reasonable cost of ongoing monitoring and maintenance of the habitat area, including the existing plantings and plant replacement as required beyond the licence term.

**1.5 Application Fee**

An application fee of \$2,400 (inclusive of GST) per project will be required for the determination of the compensation payable, preparation of the licence documentation, and staff administration costs during the term of the licence. It is anticipated that City fees for service, as contained within By-law 14577, will be adjusted from time to time to reflect the City's increased costs. This Application Fee is in addition to the compensation payable to the City, the cost to construct the habitat mitigation works, and the lump sum ongoing maintenance fee, as referred to in Section 1.4 of this policy.