



THE NEED TO PROTECT PUBLIC WATERFRONT ON THE GORGE FROM PRIVATE USE AND OCCUPATION

A Draft Submission to Your Worships:

(Submitted subject to Municipal Verification of the contents)

Mayor Richard Atwell, District of Saanich

Mayor Barb Desjardins, Township of Esquimalt

Protecting Public Green Space

University of Victoria, Environmental Law Centre

Prepared for the Veins of Life Watershed Society

Neal Parker, Law Student

Calvin Sandborn, Legal Director

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Note:

The submission below raises a concern that local governments are failing to protect Gorge Waterfront public lands from private use and occupation. In this report we ask the governments of Esquimalt and Saanich to investigate -- in order to determine the extent to which public assets may, or may not, have been lost or compromised. Our preliminary investigation indicates that there is likely a widespread loss of public values.

However, we emphasize that our investigation of the eleven sites described are preliminary and subject to possible correction. That is why we are submitting this report to the Mayors with a specific request that their municipal staff carefully examine our findings – and either verify or correct them. After municipal staff check these findings, we request that verified results be brought to Council for a discussion of our report’s recommendations and of the important public interest issues raised.

Finally, note that we ascribe no fault to any private landowners or neighbours -- many of whom may be unaware of where municipal land boundaries are. The fault, if any, lies with local governments that fail to zealously protect the property rights of the general public.

I. Loss of Public Access to the Gorge – The Need to Investigate What We’re Losing

The research in this document indicates that the governments of the District of Saanich and the Township of Esquimalt may be failing their duty to ensure that publicly owned Gorge waterfront lands actually remain public. This has been a longstanding complaint. Veins of Life Watershed Society and others have long argued that adjacent or nearby neighbours often encroach onto public lands and convert them to private use. As early as 1999 the Victoria Natural History Society did a survey report that identified the problem of private encroachment onto public spaces in Saanich.² There have long been requests that governments stop such privatization of public lands.

In this report we have attempted to investigate such complaints. Focusing on end-of-road access points around the Gorge Waterway in Esquimalt and Saanich, we have attempted to document instances where such encroachment and loss of public value appears to have occurred.

Below you will find 11 examples that raise concerns. Our preliminary research raises the question of whether public green space has been effectively privatized – or compromised -- by nearby landowners/residents. It appears likely that public lands are being compromised or used for private purposes in many of these cases – but we hereby request that you investigate to see if we are correct.

We ask you to consider and carefully examine whether these 11 sites are -- or are not -- problematic. If you can confirm encroachment or compromise of public use in any of these instances, we ask that you consider possible remedies to re-assert public control over public lands.³ For example, if local governments posted clear signs and appropriate marking and fencing, this could prevent neighbours from innocently encroaching on public lands.

More important, we suspect that this handful of examples is just the tip of the iceberg. We understand that the problem of encroachment is quite common around the Gorge, Victoria Harbour and elsewhere -- because governments are less vigilant than private landowners in asserting ownership. Unfortunately, this lack of vigilance means that the public loses enjoyment of precious waterfront, and loses the opportunity to create future Waterfront Greenways in the community.

Therefore, if municipal officials confirm the problems identified in this report, we call on you to address the critical overriding issue of protecting public access to *all* public waterfront. If your

² *Victoria Natural History Society Greenways Inventory Saanich Rights of Way that Have Greenway Potential* (March 1999), Saanich, District of Saanich Archives (SROW Project Master)

³ Governments would have a number of possible remedies for encroachment, for cutting vegetation, for depositing objects, or for constructing things on public land. For example, a municipality could deal with encroachment by suing the encroacher in trespass. Alternatively, municipal bylaws such as Saanich’s *Streets and Traffic Bylaw* and *Parks Management and Control Bylaw* could be invoked – they prohibit such things as unauthorized construction of structures and depositing of materials on the land. In addition, the Province and local governments would have possible remedies against private parties who have built docks and seawalls on public lands without proper authorization. Personal communication, Chris Nation, Saanich legal counsel.

staff confirm the preliminary research below, we will call on your governments – and all other relevant local governments -- to conduct a comprehensive survey of all public lands along the Gorge and Victoria Harbour, to ensure that all public lands remain just that: public.

We will also call on all the local governments to develop long-term policies to protect public waterfront for public use – and to develop a comprehensive Gorge/Harbour Greenways system.

II. Background: The Importance of Protecting Public Waterfront on the Gorge

Public green space is of inestimable value to the people of Greater Victoria. This is especially true of public waterfront lands. The Community benefits from having many public access points to the Gorge Waterway. Yet it appears from the research below that public green space along the Gorge is being incrementally privatized – because local governments are not being vigilant in protecting our Green Space Resource. This trend excludes the public from accessing public waterfront. Perhaps more important, this situation may undermine the possibility of creating future greenways systems along the Gorge and the Harbour.

The fact is that the numerous public access points along the Gorge have the potential to become even more valuable to the public, if linked into a large greenways system. The Veins of Life Society has advocated joining these accesses together into a Gorge Greenways Network that could be much greater than the sum of its parts. Like the Gordon Head Coastal Greenway, it could become a linked walking trail all along the Gorge – offering a multiplicity of places where residents can enjoy different waterfront experiences. But this vision will be compromised if governments fail to even protect *existing* waterfront access points.

This issue must be addressed.

Why is Public Green Space Important?

In Greater Victoria, public green space – especially waterfront green space – is an ever-diminishing resource. With the population of the CRD projected to increase by approximately 100,000 people over the next twenty years, much existing green space will be lost. It will be increasingly important to maintain existing public access to waterfront and other green spaces⁴.

Greater Victorians have always taken great pride in living in the “Super Natural” Province and the fact that we live near magnificent ocean waters, inlets, beaches, garry oak meadows and temperate rain forest. Our lifestyle – and indeed our cultural identity – is closely linked to the land. Sighting salmon, otter, sea lions, deer, eagles, heron, osprey and even the occasional whale is not uncommon for us, whereas for most parts of North America and indeed the world, it is only seen on TV or in movies.

The natural places in and around our neighbourhoods have helped make this one of the best places on Earth to live. Easy access to nearby natural places allows us to make outdoor

⁴ The 2016 Draft Regional Growth Strategy predicts that CRD population will rise from the 2011 level of 346,900 to 441,800 by 2038. See Table 1 at <https://www.crd.bc.ca/docs/default-source/regional-planning-pdf/RGS/2016rgsdraft-2016-03-11.pdf> Also see *British Columbia*, BC Statistics, Population Estimates 2016, <http://www.bcstats.gov.bc.ca/statisticsbysubject/demography/populationestimates.aspx>.

recreation an integral part of our lifestyle and given us areas where we can refresh the mind, body and spirit.

These natural places form a refuge from modern life, where we can escape stresses and return to our work and families replenished. They help build a sense of community by providing shoreline and parks where neighbours can meet casually and get to know each other. As we explore the wonders of the local shore with our children, natural places become one of the world's best classrooms. As we hike or bicycle their trails, they become the most pleasant exercise facilities. And, as we stand in awe of a diving osprey or a curious otter, natural places touch us "in the deep heart's core," both spiritually and aesthetically.

Public waterfront lands are invaluable and irreplaceable.

Impacts of Losing Natural Areas

If we fail to protect the remaining public natural areas, there could be a variety of substantial impacts:

Ecological Integrity

Privatization and development of public green space can undermine ecological integrity. Private docks along the Gorge can shade out fish habitat. If people turn green space into driveways, carports and other structures, that can damage storm water quality, fish and wildlife habitat, etc. Cutting down trees and natural vegetation on public green space can increase shoreline erosion. Dumping garden waste on public lands can damage native plants and impair natural habitat.

On the other hand, maintaining public ownership and management can help protect some of our most environmentally sensitive lands. Environmentally sensitive shorelands can be managed to preserve natural vegetation, thus helping to maintain riparian ecosystems.⁵ Such vegetation reduces the erosion and sedimentation that kill fish. Greenways trees also protect fish by maintaining appropriate water temperature and providing woody debris for habitat.

Water that runs across a 50-metre wide greenways through soil and vegetative filters is far cleaner when it exits than when it enters. Greenways can also preserve ground cover, stream corridors and wetlands, thus reducing the danger of flood damage. In fact, many modern residential developments deliberately preserve natural greenways to help deal with storm water problems and reduce storm sewer infrastructure needs.

Greenways provide food, shelter and travel corridors for wildlife, connecting larger green spaces, enabling species to move between urban-suburban and rural areas, and between natural areas in communities. Connections made by greenways can help to minimize and mitigate habitat fragmentation, probably the biggest threat to wildlife and ecosystem maintenance.

⁵ Calvin Sandborn, *Greenspace and Growth: Conserving Natural Areas in B.C. Communities* (March 1996) Commission on Resources and Environment Wildlife Habitat Canada Fisheries and Oceans Canada Ministry and Municipal Affairs and Housing Working Paper No C96-960108-5 at 57.

Social and Health Benefits of Greenways Networks and Public Green Space

As discussed above, greenways networks build a sense of community and offer psychological, social and educational benefits. These include important health benefits. By encouraging people to walk, run and cycle, greenways can help reduce government health costs. A US study showed that people who exercised regularly had 14 percent lower claims against medical insurance, spent 30 percent fewer days in the hospital and had 40 percent lower major medical claims. It has been estimated that for every mile a person walks or runs, they save society 24 cents in medical and other costs.⁶

Livability and Prosperity

In a larger sense, preserving our natural and recreation lands is essential for the long-term livability and prosperity of Greater Victoria. Public green space and greenways are key to Victoria's unique level of "livability". And such enviable livability draws tourists, new residents and new businesses.

Shoreline greenways can become significant tourist attractions and provide opportunities for nearby bed and breakfasts, bike and canoe rentals, etc. For example, the American River greenways in Sacramento has spawned a number of such businesses nearby. The San Antonio, Texas River Walk greenway is the centerpiece of the city's \$1 billion a year tourism industry. Yet when that greenways development was proposed in 1964, the area was slated to become a paved-over underground sewer.

Cities with good green space networks prosper, because they attract new industry. People want to live in safe, clean and attractive surroundings, and businesses want to locate their operations in hospitable, pleasant communities. In fact, North American cities that have experienced the strongest economic growth have tended to be those that are considered the most livable – cities such as Vancouver, Victoria, Seattle and Portland. The chief economist for one of California's largest corporations has found that corporate decision-makers consistently rank the quality of an area's physical environment as one of the two top factors in siting in enterprise, and surveys support that view.⁷ A number of state governments have officially recognized that protection of open space must be included as a critical element in their plans for economic development.⁸

Urban greenways have been at the heart of the marketing strategies and economic revival plans of cities throughout the world -- such as Austin, Cleveland, Winnipeg, Lyon, France and Sheffield, UK -- looking to attract business.⁹

It is clear that those communities that maintain green space, greenways and a livable environment are going to be the economic winners in the coming decades. Greater Victoria's

⁶ Calvin Sandborn, *op. cit.*, at 57.

⁷ Calvin Sandborn, *op. cit.*, at 3.

⁸ Calvin Sandborn, *op. cit.*, at 3.

⁹ Calvin Sandborn, *op. cit.*

natural areas – and the incomparable livability that comes with them -- will attract new businesses, especially the high tech businesses of the 21st century.

In addition, with visionary political leadership, the shoreline public lands along the Gorge and Victoria Harbour could become part of a magnificent Gorge/Harbour Greenways network.

Thus, the values at stake are extraordinarily high.

Note that shorelands have always been of special value for public use. There is a long tradition of treating shorelines as a “quasi-public” asset. For centuries the public has claimed a special interest in waterfront lands; for example, under ancient Roman law, no one was forbidden access to the seashore or to the lands immediately adjacent to the shore.¹⁰ Over the centuries that followed, Roman law and its successor laws in continental Europe continued to view shorelines and adjacent lands as unique public assets. For example, in the thirteenth century, King Alfonso the Wise of Spain stated:

*The things that commonly belong to all creatures that live in this world are these: the Air, the waters that fall in rain; and the ocean and its beach...since every creature that lives can use each of these things, according to its necessities.*¹¹

Similarly, English law recognized the public’s unique interest in waterfront land. In the seventeenth century, English law confirmed a public right to use the lands above the tides to dry nets, process fish, gather firewood and engage in other activities associated with fishing.¹² In a number of jurisdictions colonized by the English, special policies were established to reserve ownership of shorelands for the public. For example, in the original surveying of Ontario and a number of British colonies, it was common to reserve a strip of public land along water bodies one chain (66 feet) in width.¹³ The BC *Land Title Act* continues to recognize the special value of public waterfront in its general requirement that new subdivisions along urban waterfront must provide public access to the water every 200 metres.¹⁴ Such precious public waterfront should not be carelessly lost or compromised.

In light of the unique importance of protecting public access to the Gorge waterfront, we ask that the District of Saanich and the Township of Esquimalt consider the examples provided below and confirm whether or not public land is being compromised in these situations. More important, we ask that Saanich work with other local governments on the Gorge/Harbour (including Victoria, View Royal and the Capital Regional District) to:

¹⁰ Calvin Sandborn, *op. cit.*, at 76.

¹¹ Calvin Sandborn, *op. cit.*, at 76.

¹² Calvin Sandborn, *op. cit.*, at 76.

¹³ Calvin Sandborn, *op. cit.*, at 76-77.

¹⁴ See *Land Title Act* [RSBC 1996, Chapter 20] section 75.

- **conduct a comprehensive survey of public lands adjoining or near the Gorge and Victoria Harbour, to ensure that all public lands remain public;**
- **develop comprehensive policies to ensure that public waterfront land is not compromised or lost; and**
- **move forward with development of a comprehensive Gorge/Harbour Greenways Network.**

III. The Research – Examples We Looked At

Below are the sites we examined which raise questions about whether government is adequately protecting public lands for public use – and adequately protecting public assets from private use. Can your municipal staff investigate these examples, to determine whether public lands are being compromised?

[Note that the following photos and preliminary investigation were done last fall and this spring.]

List:

Overview – Gorge Waterway Public Access Points

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- Fig. 1.1 Gorge Waterway Public Access Points satellite image

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Site 5 - Rhoda Lane (between Shirley and Forshaw), Esquimalt

- Fig. 6.0 CRD Map: Rhoda Lane
- Fig. 6.1 CRD Map Satellite image: Rhoda Lane

Fig. 6.2 Rhoda Lane: facing North

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Site 6 - Mesher Place, Esquimalt

- Fig. 7.0 CRD Map: Mesher Place
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Site 8 - Aral Road, Esquimalt

- Fig. 9.0 CRD Map: Aral Road
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Site 9 - Glen Vale Road, Esquimalt

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- Fig. 10.1 CRD Map Satellite image: Glen Vale Road
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- Fig. 11.0 CRD Map: Garthland Road
- Fig. 11.1 CRD Map Satellite image: Garthland Road
- Fig. 11.2 Garthland Road: facing Northeast
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Site 11 - Rankin Road, Esquimalt

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OVERVIEW: GORGE WATERWAY PUBLIC ACCESS POINTS

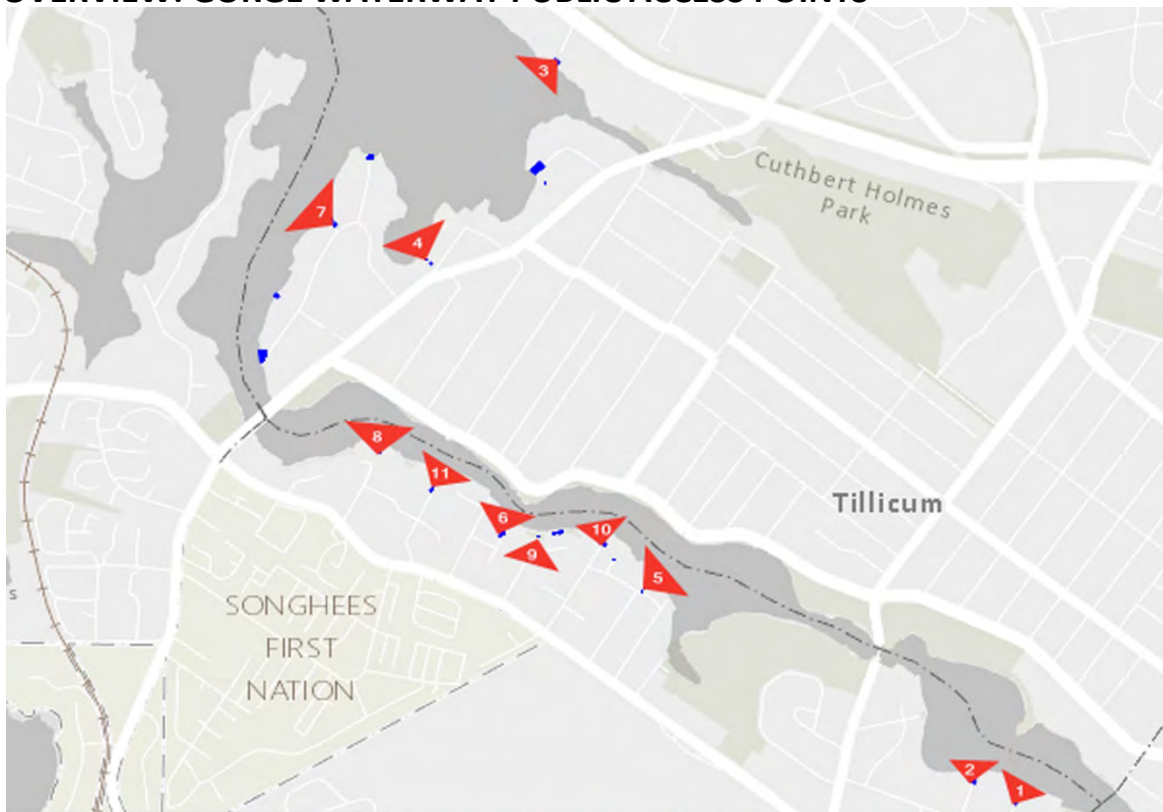


Figure 1.0 (top) and Figure 1.1 (below) show 11 public access points around the Gorge surveyed for this report. Each end of road access point is marked by a red triangle with the site number.

SITE 1 – DE COSTA PLACE, ESQUIMALT



Figure 2.0 – CRD Map: De Costa Place

Figure 2.0 is a map of the end of road access point at De Costa Place in Esquimalt. The area shaded green is zoned as a park, while the areas shaded maroon are public lands belonging to the municipality (CRD Maps)

SITE 1 – DE COSTA PLACE, ESQUIMALT



Figure 2.1 – CRD Map Satellite image: De Costa Place

The Veins of Life Watershed Society reports that they have been unsuccessfully voicing concerns to Saanich about public access to this access point for years. The access point is located at the end of De Costa Place, Esquimalt. It appears to be about 4.7 metres wide, running from the end of De Costa down to the water. (CRD Maps)

SITE 1 – DE COSTA PLACE, ESQUIMALT



Figure 2.2 – De Costa Place: facing south

Figure 2.2 was taken about a third of the way down the access and was taken facing south, back towards the end of De Costa Place (Lat/Lon: 48.442755, -123.395101).¹⁵

¹⁵ All locations and lat/long coordinates can be verified using Google Maps.

SITE 1 – DE COSTA PLACE, ESQUIMALT



Figure 2.3 - De Costa Place: facing north

Figure 2.3 was taken from the same place as the Figure 2.2 (Lat/Lon: 48.442755, -123.395101), facing the opposite direction. It appears to us that the municipality may have failed to take action to prevent the encroachment of private landowners. By our estimation, the approximate width of the public access should be from the fence to the white crate on the left of the picture. However, one can see that a private garden has been extended into the path, apparently blocking the access point. The picture below shows how the access appears to be blocked by the garden extensions.

SITE 1 – DE COSTA PLACE, ESQUIMALT



Figure 2.4 - De Costa Place: same location as Figure 2.3

Figure 2.4 was taken from the same spot as Figures 2.2 and 2.3. By our estimation the public access should extend from the fence on the right of the image to the stone block to the left of the recycling bin on the left of the image (approximately). However, this access appears to be blocked by the shrubbery, topsoil, wheelbarrow and bins that appear to be part of a garden extension.

SITE 1 – DE COSTA PLACE, ESQUIMALT



Figure 2.5 - De Costa Place - topsoil piles (facing North)

Figure 2.5 was taken from where the topsoil piles in Figure 2.4 were located and is facing north (Lat/Long: 48.442844, -123.395060). The image faces the waterfront. If our calculations are correct, a cleared path and municipal signposting could grant the public access to this prime piece of public waterfront – which currently appears to the casual observer to be private property.

SITE 1 – DE COSTA PLACE, ESQUIMALT



Figure 2.6 - De Costa Place - topsoil piles (facing South)

Figure 2.6 is taken from the same location as Figure 2.5, facing the opposite direction (South). Here one can get a better view of how what appears to be a garden extension, in the form of topsoil, a wheelbarrow, garden stones and a bin in the background. This creates the impression that this is all private property. However, according to our calculations the public access should extend from the fence on the left side of the image to about the left-most stone in the line of stones on the right side of the image (approximately).

Are we correct in our interpretation of the above images and map?

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.0 - CRD Map: Arcadia Street

Figure 3.0 is a map of the public access point at the end of Arcadia Street in Esquimalt. The area shaded maroon is public waterfront land, belonging to the municipality (CRD Maps).

SITE 2 – ARCADIA STREET, ESQUIMALT

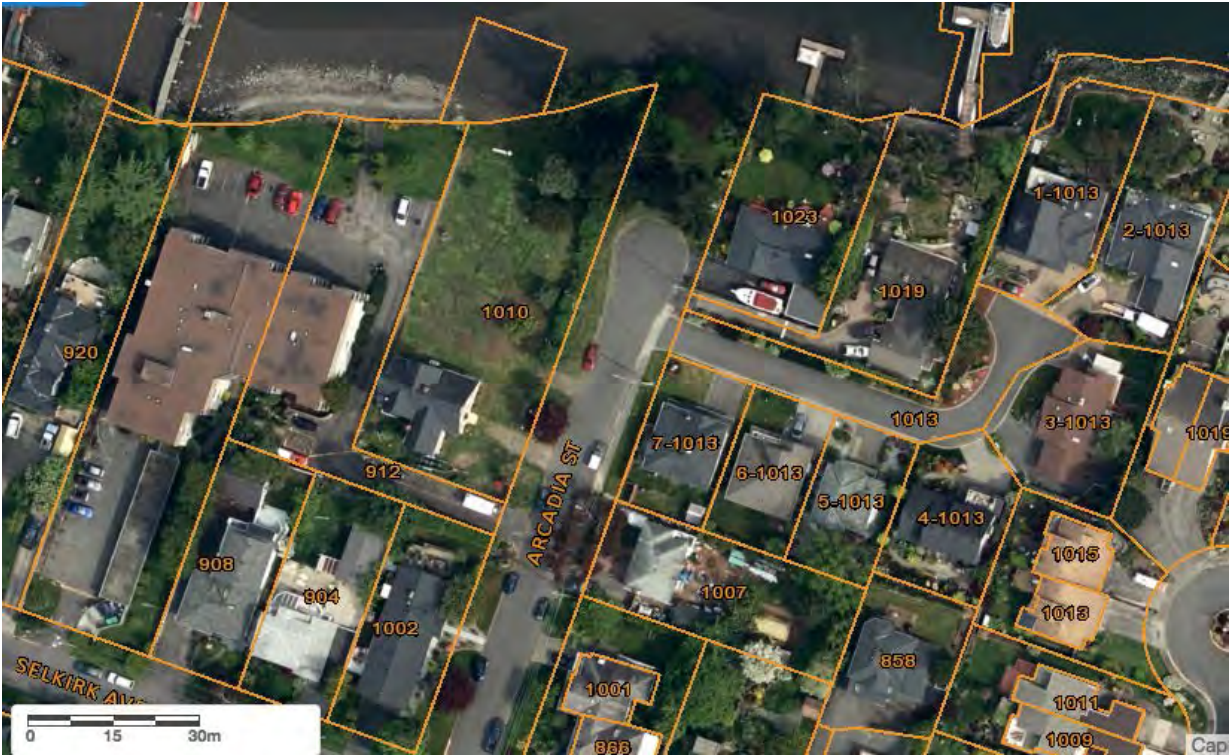


Figure 3.1 - CRD Map Satellite image: Arcadia Street

The Public Access point at Arcadia is one block west of the one at De Costa. The Veins of Life Watershed Society had built a path on the public access in the 1990s. However that path no longer exists, and the access point has apparently become a dumping ground for garden clippings, waste and other litter. Furthermore, one can see when comparing Figure 3.1 with Figure 3.10 that a garden appears to have been extended into the public access. (CRD Maps)

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.2 - Arcadia Street: mid-point of cul-de-sac (facing North)

Figure 3.2 is taken from (Lat/Long: 48.443079, -123.396854) facing north from the mid-point of the cul-de-sac seen in the aerial photograph depicted in Figure 3.1. By our estimation, the public access point here is 18-metres wide and extends from one side of the image to the other (covers the entire frame).

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.3 - Arcadia Street: end of cul-de-sac

Figure 3.3 is taken from the end of the cul-de-sac (Lat/Long: 48.443173, -123.396832), right in front of the barrier at the end of the road seen in Figure 3.2. All the land covered by the image is public, by our estimation.

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.4 - Arcadia Street: other side of barrier (facing Northeast)

Figure 3.4 is taken from the other side of the barrier facing Northeast (Lat/Long: 48.443205, -123.396778). It depicts land that should apparently form part of the public access -- however, it appears to have been turned into a residential garden. This may be checked by looking at the aerial shot in Figure 3.1 where on the east side of the public access one can see what looks like a garden extension.

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.5 - Arcadia Street: facing Northwest (same location as Figure 3.4)

Figure 3.5 was taken from the same location as Figure 3.4, facing northwest, and depicts what appears to be the dumping of residential garden waste. This appears to block off a significant portion of the public access.

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.6 - Arcadia Street: facing North

Figure 3.6 was taken facing due North (Lat/Long: 48.443241, -123.396797) and depicts a close up shot of the dumping of garden waste referred to in the previous photograph.

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.7 - Arcadia Street: facing East

Figure 3.7 was taken facing East (Lat/Long: 48.443244, -123.396771). It depicts what appears to be a residential garden extended into the public access point. By our estimation, the property line that marks the boundary of the public land is on the other side of those flowerbeds and gate. This can be seen in the aerial shot (Figure 3.1), where on the East side of the access there appears to be a lawn and some kind of structure erected on the public land. The location of the structure in Figure 3.1 appears to correspond to the location of the gate and flowerbeds in Figure 3.7. Are we correct in that interpretation?

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.8 - Arcadia Street: same location as 3.7

Figure 3.8 was taken from the same location as Figure 3.7 and similarly shows how a residential garden appears to have been extended into the public land. Here one sees a clearer view of the gate and flowerbeds referred to in the description for Figure 3.7.

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.9 - Arcadia Street: facing South

Figure 3.9 was taken from the same location as Figures 3.7 and 3.8 and faces South towards the cul-de-sac at the end of Arcadia Street -- which is on the other side of the barrier seen behind the tree in foreground of this Image. By our estimation, everything in frame should be public land. However, one can see what appears to be some form of residential waste (a white metal covering) on the bottom left hand corner of the image.

SITE 2 – ARCADIA STREET, ESQUIMALT



Figure 3.10 - Arcadia Street: facing East

Figure 3.10 was taken from the same location as Figure 3.9 but facing east. This photo depicts a clearer shot of the residential waste from Figure 3.9 and also depicts a wood pile right next to it. Both are apparently on public land and along with the gate, flowerbeds and lawn extension lend an overall appearance of private property -- when in fact much of the land is public, by our estimation. See Figure 3.1 where the property line appears to be on the other side of the garden bed on the left side of the picture. Are we correct in this interpretation?

SITE 3 – GRANGE ROAD, SAANICH



Figure 4.0 - CRD Map: Grange Road

Figure 4.0 is a map of the public access point at the end of Grange Road in Saanich. The area shaded maroon is public waterfront land, belonging to the municipality (CRD Maps).

SITE 3 – GRANGE ROAD, SAANICH

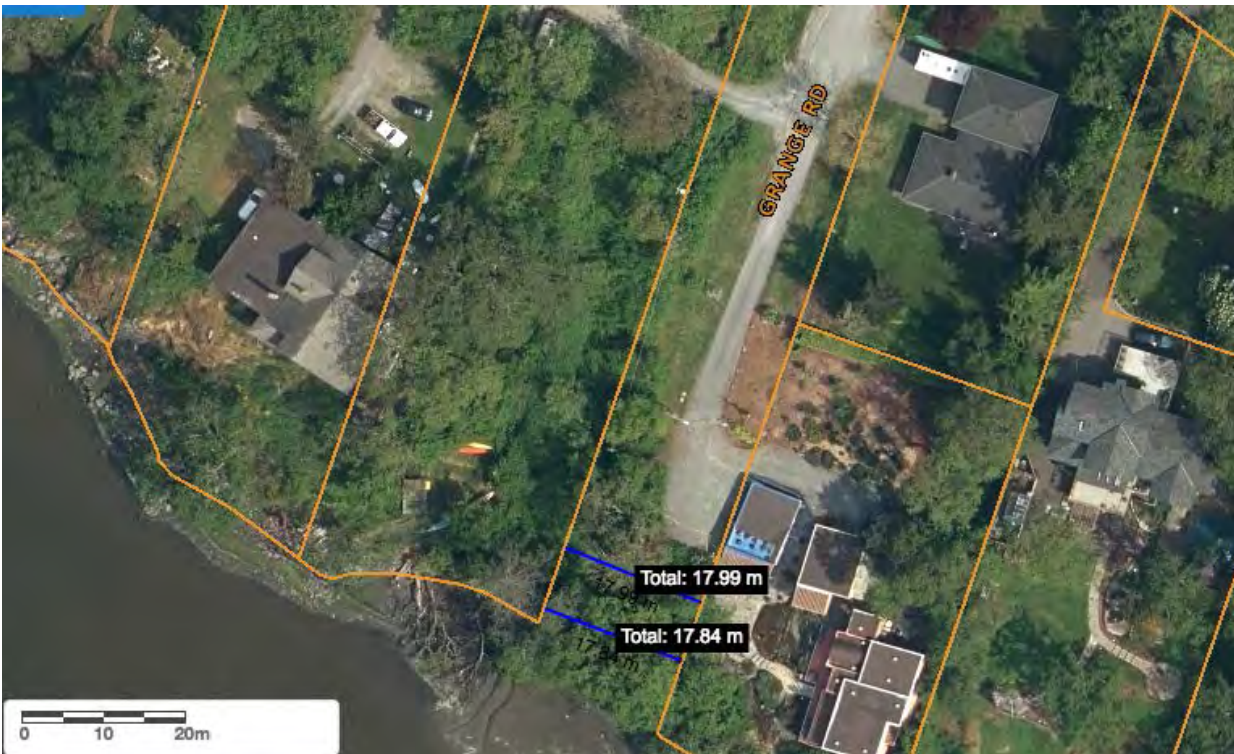


Figure 4.1 - CRD Map Satellite image: Grange Road

Figure 4.1 depicts an aerial shot of the end of road access point at Grange Road in Saanich. The end of road public access is approximately 18-metres wide and from the aerial shot, one can clearly see that the end of the paved road itself is in fact public. (CRD Maps)

Are we correct on this?

SITE 3 – GRANGE ROAD, SAANICH



Figure 4.2 - Grange Road: facing South

Figure 4.2 was taken facing south (Lat/Long: 48.461039, -123.412186) and depicts the end of Grange Road. By our estimation, the public access extends from the right of the blue building on the left side of the photograph all the way to the right edge of the photograph itself. One can see that on the pole in middle of the image which is clearly in public land there is a sign that says 'No Turn Arounds' and a house number, making it appear as though everything beyond that point is private property when it is in fact public, according to our reading.

Is this correct?

SITE 3 – GRANGE ROAD, SAANICH



Figure 4.3 - Grange Road: facing South

Figure 4.3 was taken facing South (Lat/Long: 48.460970, -123.412232) at the end of Grange Road facing towards the water, just to the left of the lamppost in the previous image. It depicts what could be made into a public municipal pathway down to the water, if we are correct.

SITE 3 – GRANGE ROAD, SAANICH



Figure 4.4 - Grange Road: facing West

Figure 4.4 was taken from the same location as Figure 4.3 at the end of Grange Road, but facing west. It depicts what appears to be the dumping of garden clippings on what is – by our estimation -- public land in the middle of the end-of-road access point.

SITE 3 – GRANGE ROAD, SAANICH



Figure 4.5 - Grange Road: facing East

Figure 4.5 was taken from the same spot as Figures 4.4 and 4.3, but facing east. From the aerial shot in Figure 4.1, one can see how the property line is within centimetres of the blue building. The three parking stalls, along with the “No Turn Around” sign and house number on the lamppost depicted in Figure 4.2 contribute to the impression that this is all private land. However figures 4.0 and 4.1 indicate that it is part of the end of a public road, in our estimation.

Are we correct in our interpretation of this public access point?

Site 4 - Glenwood Avenue, Saanich



Figure 5.0 - CRD Map: Glenwood Road

Figure 5.0 is a map of the public access point just off of Glenwood Avenue near its intersection with Admirals Rd in Saanich. The area shaded maroon is public waterfront land, belonging to the municipality (CRD Maps).

Site 4 - Glenwood Avenue, Saanich



Figure 5.1 - CRD Map Satellite image: Glenwood Road

Figure 5.1 is an aerial shot of the public access point on Glenwood Ave, just off of Admirals Rd. This access point reportedly used to be a road (Garry Road), and private encroachment at this location was identified as a cause for concern in the 1999 Victoria Natural History Society Report.¹⁶ However, Garry Road is no longer in the CRD maps database. There appear to be structures at its intersection with Glenwood Avenue blocking access to the public waterfront. (CRD Maps)

¹⁶ *Victoria Natural History Society Greenways Inventory Saanich Rights of Way that Have Greenway Potential* (March 1999), Saanich, District of Saanich Archives (SROW Project Master)

Site 4 - Glenwood Avenue, Saanich



Figure 5.2 - Glenwood Avenue: facing West

Figure 5.2 was taken facing west and depicts what apparently should be the public access point (Lat/Long: 48.455746, -123.416763). According to our reading of the aerial shot, the access should be approximately 6-metres wide -- and extend from about 1 metre left of the forest green vehicle on the left side of the image to about 1 metre to the right of the tent structure. From this image, the public access point appears to have been made into a driveway. Is our interpretation correct? Is there an explanation?

Site 4 - Glenwood Avenue, Saanich



Figure 5.3 - Glenwood Avenue: facing East

Figure 5.3 was taken facing east facing Glenwood Avenue (Lat/Long: 48.455804, -123.416905) from the middle of the apparent public access. By our estimation, the access should extend 3 metres to either side of the point where this photo was taken. The two vehicles and tent structure covering a boat make it appear as though this is part of a private property, when our reading of the aerial image and maps indicate it is public.

Are we correct?

Site 4 - Glenwood Avenue, Saanich



Figure 5.4 - Glenwood Avenue: facing West towards water

Figure 5.4 was taken facing west towards the water approx. three fifths of the way down the apparent public access. It depicts vegetation that block access to the water (Lat/Long: 48.455935, -123.417143).

SITE 5 - RHODA LANE (BETWEEN SHIRLEY AND FORSHAW), ESQUIMALT



Figure 6.0 - CRD Map: Rhoda Lane

Figure 6.0 is a map of the public access point just off of Rhoda Lane in Esquimalt between its bisections with Shirley Rd and Forshaw Rd. The area shaded maroon is public waterfront land, belonging to the municipality (CRD Maps).

SITE 5 - RHODA LANE (BETWEEN SHIRLEY AND FORSHAW), ESQUIMALT



Figure 6.1 - CRD Map Satellite image: Rhoda Lane

Figure 6.1 is an aerial photo of a public access point on Rhoda Lane that is just East of its intersection with Shirley Road. The public access point should apparently be about 3 metres wide. It also appears that a structure has been put up in the middle of the access point about a quarter of the way between the lane and the waterfront. (CRD Maps)

SITE 5 - RHODA LANE (BETWEEN SHIRLEY AND FORSHAW), ESQUIMALT



Figure 6.2 - Rhoda Lane: facing North

Figure 6.2 was taken facing North (Lat/Long: 48.447771, -123.409056) from the road and depicts what appears to be the public access. By our reading of the map at Figure 6.0 and aerial shot Figure 6.1, the public access should extend from about the middle of the stone wall on the left side of the picture to 3/5ths of the way across the driveway. However, it would appear that a private structure (car cover) has been built on the public access.

Are we correct in this interpretation?

SITE 5 - RHODA LANE (BETWEEN SHIRLEY AND FORSHAW), ESQUIMALT



Figure 6.3 - Rhoda Lane: same as 6.2

Figure 6.3 was taken from the same place as Figure 6.2 and depicts a close up of the apparent public access -- which according to our reading of the aerial shot (Figure 6.1) should extend from the hedge to the right side of the tail light of the vehicle. (By our estimation.) It appears that this public land now forms part of a private driveway. Are we wrong in this interpretation?

SITE 5 - RHODA LANE (BETWEEN SHIRLEY AND FORSHAW), ESQUIMALT



Figure 6.4 - Rhoda Lane: facing North

Figure 6.4 was taken facing the same way as the preceding images, North (Lat/Long: 48.447884, -123.408971). Again, by looking at the aerial shot, our estimation is that the public access should extend approximately from the hedge to the vehicle. However, again the public access appears to form part of someone's private property, with a pathway, driveway and compost bin.

Are we correct in this interpretation?

SITE 5 - RHODA LANE (BETWEEN SHIRLEY AND FORSHAW), ESQUIMALT



Figure 6.5 - Rhoda Lane: facing North

Figure 6.5 was taken from the same place as Figure 6.4 and shows a close up of some potted plants that can be seen in that image. This path and potted plants at the apparent public access point create the appearance that this is private property. Are we correct in our interpretation?

SITE 6 - MESHER PLACE, ESQUIMALT



Figure 7.0 - CRD Map: Mesher Place

Figure 7.0 is a map of the public access point at the end of Mesher Place in Esquimalt. The area shaded maroon is public waterfront land, belonging to the municipality (CRD Maps)

SITE 6 - MESHER PLACE, ESQUIMALT



Figure 7.1 - CRD Map Satellite image: Mesher Place

Figure 7.1 is an aerial shot of what should be a public access point at the end of Mesher Place in Esquimalt. The public access is located at the end of the cul-de-sac between properties 934 and 937 -- and is 4.5 metres wide leading down to the waterfront. As can be seen from this aerial shot, there appears to be something blocking the apparent public access point. (CRD Maps)

SITE 6 - MESHER PLACE, ESQUIMALT



Figure 7.2 - Mesher Place: facing north

Figure 7.2 was taken at the end of the cul-de-sac facing north towards the waterfront (Lat/Long: 48.449147, -123.414279). The green hedges in the centre of the photograph can be seen in the aerial shot as well (just above the white vehicle) and are directly in front of the beginning of the apparent public access. There is no municipal signage, so the access blends in with the surroundings and appears to form part of private property.

SITE 6 - MESHER PLACE, ESQUIMALT



Figure 7.3 - Mesher Place: behind shrubbery

Figure 7.3 was taken from behind the green bushes/shrubbery in Figure 7.2 (Lat/Long: 48.449271, -123.414258). The access should apparently be 4-metres wide and go right through the reddish green hedge in the middle of the photograph, which can also be seen in the aerial shot as blocking the public access. Again, this creates the appearance that this is private property when the aerial shot shows that it is public, by our estimation.

Are we correct in our interpretation?

SITE 6 - MESHER PLACE, ESQUIMALT



Figure 7.4 - Mesher Place: facing north

Figure 7.4 was taken facing North from the same location as Figure 7.3 and depicts the reddish green hedge that is in the middle of the apparent public access depicted in Figure 7.3. One can make out the rear of a white vehicle, which apparently would be blocking the public access. As with the other examples so far, this contributes to the impression of public land as being private.

Are we correct in identifying a problem here?

SITE 7 - MURRAY DRIVE, ESQUIMALT



Figure 8.0 - CRD Map: Murray Drive

Figure 8.0 is map of the public access point that is west of the intersection of Ashley Road and Murray Drive. The area shaded maroon is public waterfront land, belonging to the municipality. As part of this project we surveyed the access point on the left side of this picture. (CRD Maps)

SITE 7 - MURRAY DRIVE, ESQUIMALT

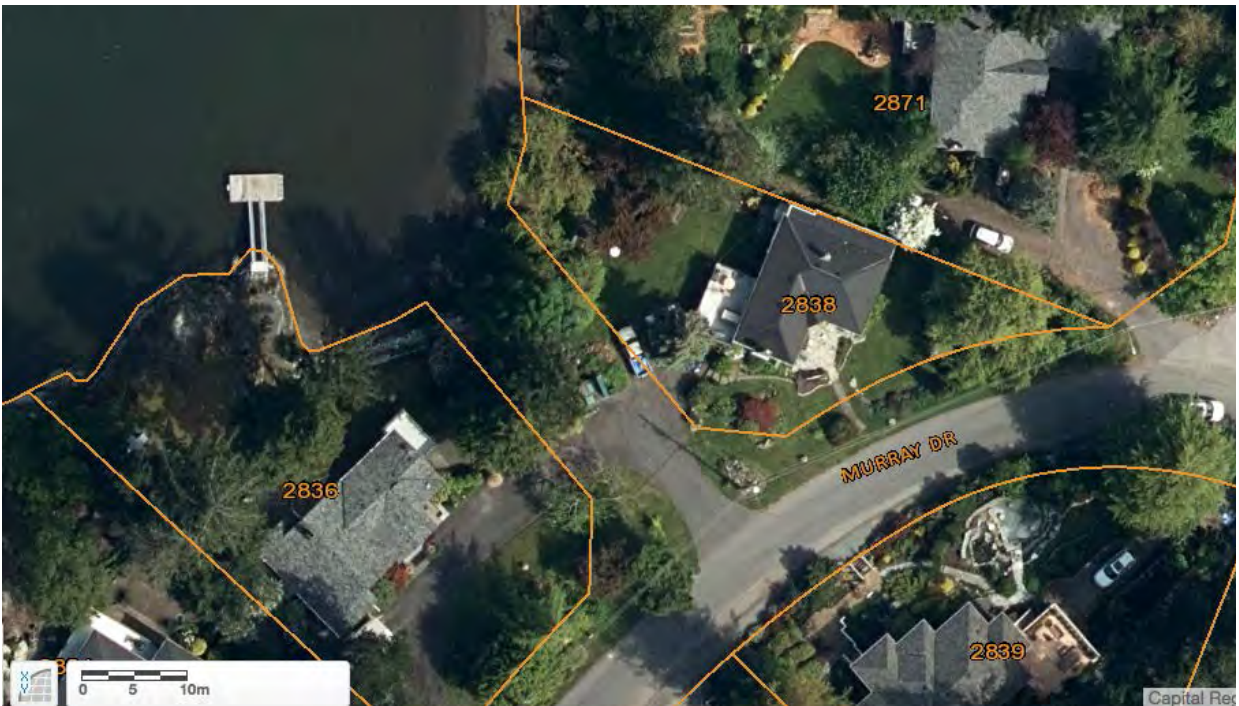


Figure 8.1 - CRD Map Satellite image: Murray Drive

Figure 8.1 is an aerial shot of the same public access point between 2836 and 2838 Murray Drive. The public access point is 12-metres wide. Encroachment at this site was alleged in a 1999 Victoria Natural History Society Report¹⁷, indicating that there has been public concern about this access point for more than 15 years. (CRD Maps)

¹⁷ Victoria Natural History Society Greenways Inventory Saanich Rights of Way that Have Greenway Potential (March 1999), Saanich, District of Saanich Archives (SROW Project Master)

SITE 7 - MURRAY DRIVE, ESQUIMALT



Figure 8.2 - Murray Drive: facing west

Figure 8.2 was taken from Murray Rd facing west (**Lat/Long: 48.456688, -123.420366**) and depicts the end of the end of road public access, which based on the previous aerial image extends from the truck on the right side of the picture to 2 metres to the left of the wooden post with the green box on it in the middle left of the picture. (By our estimation.) In the middle of the picture is a public utility box.

SITE 7 - MURRAY DRIVE, ESQUIMALT



Figure 8.3 - Murray Drive: facing west from utility box

Figure 8.3 was taken facing west (Lat/Long: 48.456820, -123.420600) from behind the utility box depicted in Figure 8.2. Everything covered in the shot is apparently on public land, in our estimation. However, the garbage bin, compost bin and garden stones (in the middle of the image) create the impression that it is private land.

Are we correct?

SITE 7 - MURRAY DRIVE, ESQUIMALT



Figure 8.4 - Murray Drive: facing west from end of public access point

Figure 8.4 was taken facing west (Lat/Long: 48.456891, -123.420698) from the end of the public access point and depicts the end of the public access to the water.

SITE 7 - MURRAY DRIVE, ESQUIMALT



Figure 8.5 - Murray Drive: facing east

Figure 8.5 was taken from the same place as Figure 8.4, but facing east. In our estimation, everything in frame is on public land, as we can see the green box from the wooden post shown in Figure 8.2. However, we can see that a recycling/compost/garbage station, a ladder and some discarded fill create the impression that it is on private land.

Are we correct in our interpretation of this public access point?

SITE 8 - ARAL ROAD, ESQUIMALT



Figure 9.0 - CRD Map: Aral Road

Figure 9.0 is a map of the public access point at the end of Aral Rd in Esquimalt. The area shaded maroon is public waterfront land, belonging to the municipality, while the area that is shaded green is a park (CRD Maps).

SITE 8 - ARAL ROAD, ESQUIMALT



Figure 9.1 - CRD Map Satellite image: Aral Road

Figure 9.1 depicts the end of road access point at Aral Road in Esquimalt, which is about 19-metres wide, between 10 Phillion Place and 905 Aral Rd. One can see from the aerial shot that there are objects/structures on what is actually public land that creates the appearance that it is actually private property. (CRD Maps) Are we correct in that conclusion?

SITE 8 - ARAL ROAD, ESQUIMALT



Figure 9.2 - Aral Road: facing North

Figure 9.2 depicts the end of Aral Road facing North (Lat/Long: 48.450883, -123.419102). By our estimation, the public access should extend from the street sign on the left side of the photograph to the smaller white post on the right side of the image. To access the water one must walk to the right of the tree with the light green leaves north towards the water. Again, it is not clearly signposted and the surroundings lend the impression that it is private property.

SITE 8 - ARAL ROAD, ESQUIMALT



Figure 9.3 - Aral Road: facing West

Figure 9.3 was taken in the middle of the access point facing west (Lat/Long: 48.451317, -123.418726) towards 10 Phillion Place. It depicts garden clippings that have apparently been dumped on the public land as well as some construction debris. The black bin is also apparently on public land, creating the impression that it is private. By our estimation, the public land begins about a metre to this side of the house. Some of the structures (debris) are also apparently visible in the aerial shot. Also we measured the width of the public access as being 10 metres when it should have been approximately 19 metres.

Are we mistaken about any of this?

SITE 8 - ARAL ROAD, ESQUIMALT



Figure 9.4 - Aral Road: facing Northeast

Figure 9.4 was taken facing northeast (Lat/Long: 48.451292, -123.418633) and depicts the end of the public access – a place from which a person could launch a small boat.

SITE 9 - GLEN VALE ROAD, ESQUIMALT



Figure 10.0 - CRD Map: Glen Vale Road

Figure 10.0 is a map of the public access point near the end of Glen Vale Rd in Esquimalt. The area shaded maroon is public waterfront land, belonging to the municipality, while the areas that are shaded green are parks (CRD Maps).

SITE 9 - GLEN VALE ROAD, ESQUIMALT

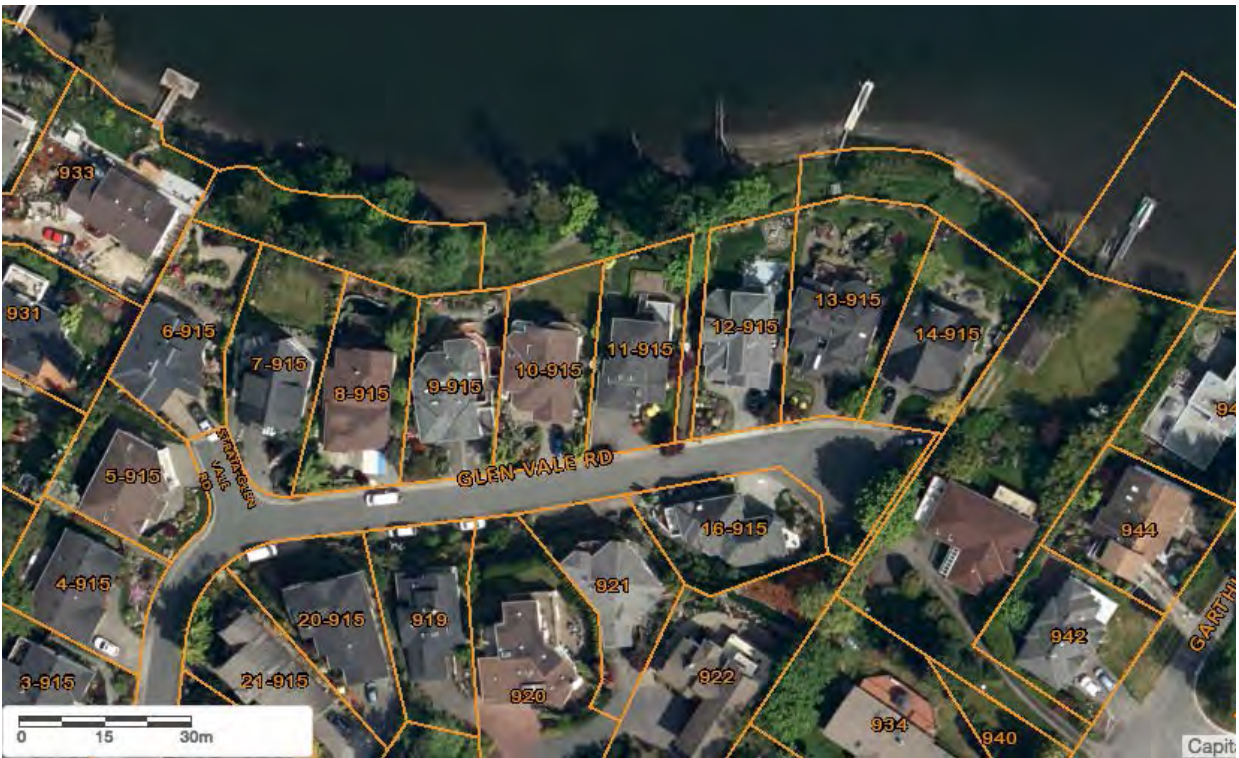


Figure 10.1 - CRD Map Satellite image: Glen Vale Road

Figure 10.1 is an aerial shot of the public access point at Glen Vale Road. The public access point is well marked in between properties 11-915 and 12-915 and goes down to a public shoreline that covers the length of six properties to the west and three properties to the east. The (jagged) rectangles between 13-915 to 14-915 and the water and 6-915 to 9-915 and the water are, according to the CRD, zoned as parks. (CRD Maps)

SITE 9 - GLEN VALE ROAD, ESQUIMALT



Figure 10.2 - Glen Vale Road: facing North

Figure 10.2 was taken facing north (Lat/Long: 48.449270, -123.411897) and depicts an apparent private dock seemingly attached to the public park land. The dock is visible in the aerial shot (Figure 10.1) where it can be seen as attached to the public land. The plank of wood that connects it to land is seemingly unsecure and could potentially float off into the Gorge where it could pose risks to boaters and impact Gorge hydrology. The dock itself could shade out fish habitat and have other effects.

Has any government approved the establishment of this dock – and its apparent establishment on public land?

Are we correct that the dock is attached to public land?

SITE 9 - GLEN VALE ROAD, ESQUIMALT



Figure 10.3 - Glen Vale Road: facing West

Figure 10.3 was taken facing West (Lat/Long: 48.449190, -123.413175) and depicts an orange fence that appears to have been placed on public land. The light brown fence represents the western extremity of the public land on the left (west) side of the aerial image. The orange fence has been put up where the property line between 6-915 and 7-915 intersects with the public land. The orange fence appears to block people who might want to continue walking on the public waterfront lands on both sides of the orange fence.

Are we correct on this?

SITE 9 - GLEN VALE ROAD, ESQUIMALT



Figure 10.4 - Glen Vale Road: facing East

Figure 10.4 was taken facing east from the other side of the orange fence (Lat/Long: 48.449216, -123.413261). Again we can see how free access across apparently public land (everything to the left of the wooden fence) is blocked by the orange fence.

Should the orange fence be there, since it appears to block access to public waterfront for members of the public enjoying the relatively large public waterfront area on both sides of the orange fence?

Are we mistaken in our concern about whether the orange fence should be there?

Did the municipality put the orange fence there?

If not, who did?

SITE 10 - GARTHLAND ROAD, ESQUIMALT



Figure 11.0 - CRD Map: Garthland Road

Figure 11.0 is a map of the public access point at the end of Garthland Road in Esquimalt. The area shaded maroon at the end of Garthland Road is public land belonging to the municipality. (CRD Maps)

SITE 10 - GARTHLAND ROAD, ESQUIMALT

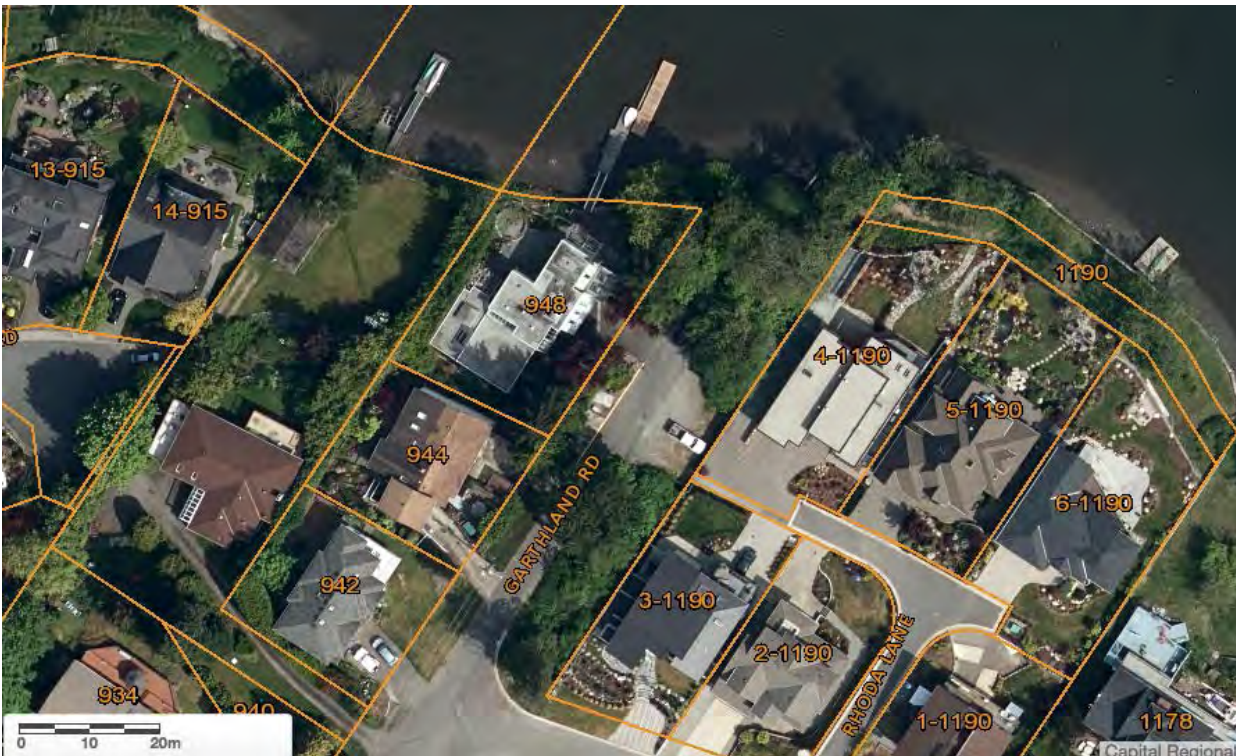


Figure 11.1 - CRD Map Satellite image: Garthland Road

Figure 11.1 is an aerial shot of the public access at Garthland Road in Esquimalt. The public land extends from the end of the road eastwards – separating the 1190 housing development from the water. On the right (east) side along the water there is a dock that appears to be attached to the public land. (CRD Maps)

SITE 10 - GARTHLAND ROAD, ESQUIMALT



Figure 11.2 - Garthland Road: facing Northeast

Figure 11.2 was taken facing northeast (Lat/Long: 48.448966, -123.409872) and depicts the dock referred to on the previous page that has apparently been built from public land. On the right side of the dock, one can see a yellow “private property” sign, creating the impression that the area around it is private property.

Are we correct in concluding that this dock is not attached to private land, but to public land?

SITE 10 - GARTHLAND ROAD, ESQUIMALT



Figure 11.3 - Garthland Road: facing North

Figure 11.3 was taken facing due North (Lat/Long: 48.448916, -123.409785) and depicts the same dock. Again, we can see a red sign that says “private” on it. However, the dock appears to be attached to public – not private -- land, according to our reading of the aerial shot and map (Figures 11.0 and 11.1).

Are we correct?

Has government authorized this dock? If so, why?

SITE 11 - RANKIN ROAD, ESQUIMALT



Figure 12.0 - CRD Map: Rankin Road

Figure 12.0 is a map of the public access point at the end of Rankin Road in Esquimalt. The areas shaded maroon represent public land belonging to the municipality. (CRD Maps)

SITE 11 - RANKIN ROAD, ESQUIMALT



Figure 12.1 - CRD Map Satellite image: Rankin Road

Figure 12.1 depicts a public access point at Rankin Road in Esquimalt, between properties 941 and 948. The public access should be approximately 5 metres wide and extend down to the waterfront. (CRD Maps)

SITE 11 - RANKIN ROAD, ESQUIMALT



Figure 12.2 - Rankin Road: facing Northeast

Figure 12.2 was taken from the end of Rankin Road facing northeast (Lat/Long: 48.450096, -123.416943). Based on our reading of the aerial shot, the beginning of the public access point would be from about half a metre to the left of the light brown pole to the right edge of the shrubbery. There is no signage, and without a map as a reference, one would think that the public access just forms part of someone's private property.

SITE 11 - RANKIN ROAD, ESQUIMALT



Figure 12.3 - Rankin Road: facing Northeast

Figure 12.3 was taken facing northeast (Lat/Long: 48.450233, -123.416872) from behind the poles depicted in Figure 12.2. By our estimation, the public access should begin at the edge of the lawn and extend into the vegetation on the right side of the image. However, given the lack of signage or maintenance of the public land, it appears that it forms part of someone's private property.

Is our identification that this is actually a public access correct?

IV. Remedies

Local governments have a number of possible remedies to address some of the issues raised above. For example, local governments may have remedies for encroachment, for cutting vegetation, for depositing objects, or for constructing things on public land.

For example, a municipality might deal with encroachment by suing the encroacher in trespass.¹⁸ Alternatively, a number of municipal bylaw provisions might be invoked. For example, in Saanich the *Streets and Traffic Bylaw* and *Parks Management and Control Bylaw* prohibit such things as unauthorized construction of structures and depositing of materials on municipal lands.

In addition, the Province and local governments would have possible remedies against private parties if they have built docks and seawalls on public lands without proper authorization.¹⁹

If you verify our findings above, and feel that remedial action is necessary, we ask that your government consider the full menu of possible remedies for each situation actually verified that requires remedial action.

However, it is far more important to look forward than to look backwards. That is why we propose the forward-looking recommendations below.

¹⁸ Municipalities can pursue a civil claim on parties that encroach on municipal land without express authorization. See *District of West Vancouver (Corporation of) v. Liu* 2016 BCCA 96

¹⁹ Personal communication, Chris Nation, Saanich legal counsel.

V. Conclusion and Recommendations

It would appear that public lands are being compromised, and incrementally lost to private use/encroachment. These public lands include many waterfront parks and green spaces. As we argued in Section II, such waterfront lands are of great environmental, social and economic value to the community.

Therefore, we call on your governments to:

1. **Verify our findings, and make any necessary corrections.**
2. **Comprehensively survey** the public lands in and around the Gorge and Victoria Harbour to determine all locations where public use and access are being compromised by neighbours. A survey will give a better picture of the scope of the problem -- as well as what steps need to be taken and what resources are needed to address this issue.
3. Take steps using the remedies at your disposal to **eliminate private occupation or compromise** of such public lands.
4. Take steps to **eliminate private docks** on public lands.
5. **Establish prominent signage, marking and fencing** to ensure that it is clear to all that public shorelands are public. In all but one of the access points that we surveyed (Glen Vale Rd), a lack of signage contributed greatly to the impression that the lands were private.

Signage that clearly indicates the location of the public access would make the general public aware that they can use these public access points. Making the public aware of all the different public access points around the Gorge and Harbour will also reduce traffic at the ones where signage is currently in place -- and alleviate parking and traffic issues that may arise at those public access points.

6. **Establish stewardship programs and rules**, and monitor the level of public use of these access points. Proper stewardship and conservation of these valuable public assets are key. Stewardship programs can encourage public awareness of the access points and help ensure their proper conservation and protection.
7. **Collaborate with other governments along Victoria Harbour and the Gorge** to develop long-term policies to protect public waterfront for public use -- and to develop a comprehensive Gorge/Harbour Greenways system.