



# VILLAGE OF BELCARRA

*"Between Forest and Sea"*

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## Revenue Generation Options for Belcarra Roads

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### A Public Discussion Paper

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## 1. Introduction

The purpose of this document is to provide the Village of Belcarra with an inventory of surplus roads, including a discussion of their historical and current uses, and to explore options for potential revenue generation from roadway lands in response to a February 13, 2012 community petition. The petition reads:

*“We, the undersigned property owners of the Village of Belcarra, insist Council seek alternate options that would yield revenues to facilitate funding the increased costs resulting from the water system project. We request Council immediately explore all other possible sources of funding to alleviate these increased costs to taxpayers. These revenues might be generated by the re-designation of undeveloped road allowances &/or acquisition of Crown &/or Metro Vancouver lands which could be developed and sold as building lots.”*

As the complexity of the subject matter became clearer, the scope was broadened to promote discussion on potential future uses of municipal roads. The roads are an asset equally shared by every property owner in the municipality. Accordingly, the revenue generated from roads is a benefit to be shared with every property owner on an equal basis.

The work includes a community reconnaissance, specific site viewing, and incorporation of site specific factors provided by village staff. This permitted establishing the inventory and will eventually permit development of appropriate guidelines.

This document does not present specific recommendations for disposal or retention. Significant volumes of policy, written in great detail, are on hand with many levels of government on this topic. Our document, therefore, presents the most common and significant factors that must be considered in order to make informed decisions in Belcarra. Decisions will be made by Village Council as appropriate to each property at the particular time.

The Village has some non-highway holdings and these are registered in the Land Title Office. Only a few property titles have ever been registered in the name of the municipality. For Belcarra these titled lands have usually been acquired by application to the Crown for public use, and often have building improvements on them. The Village of Belcarra, given its brief history, has not established an inventory of land through tax forfeitures, purchase, exchanges etc. Therefore, land disposal as a revenue generating tool has not required a related administrative program, until now. The current project scope covers lands where the community has, or may come to have, a right of ownership in roads.

The municipal interest in roads is not a 'titled' interest. Roads are usually the untitled product of the *Land Title Act* (mostly dedications when subdividing private land) or the *Land Act* (surveys of Crown land). The first survey of the properties and roads within the Woodhaven subdivision was a public, not private, process conducted by the federal government. Before the incorporation of Belcarra all the roads were administered and maintained by the Province. There are many obvious public purposes for roads, now and in the future. The list includes:

- Traffic
- Lanes
- Walkways
- Waterfront (shoreland) access
- Watercourses (beds of bodies of water belong to the Crown)
- Retaining walls and grade control structures
- Public utilities
- Accommodating transit facilities/pull outs
- Municipal parks
- Storm run off
- Access to 'lands beyond' subdivisions
- Trail networks
- Needs by other governments
- And sometimes -- snow dumps

## 2. About Roads

### 2.1 What is a Road?

In the origins of our surveyed British Columbia communities the Crown surveyors recognized existing roads or trails and provided for future roads by creating roads or 'municipal highways'. Strictly speaking a 'road allowance' is not a legal term in today's community structure although it appears on plans and in many documents. We will use the term 'Road' in this paper.

Roads and the agencies which govern them are usually established within statutes such as the *Land Act*, *Transportation Act*, *Community Charter* and *Land Title Act* as well as a few other related statutes. For simplicity and purposes of this report the definition of a road is that of a municipal 'Highway' under section 35 of the *Community Charter*.

Roads were originally to be used for a public “highway” which by definition, could include a public street, path, walkway, trail, lane, bridge, road, thoroughfare, trestle, tunnel, ferry landing, ferry approach, park (i.e. as at Turtlehead Road) or any other public way.

Typically, those roads and road allowances were 66 feet wide, allowing for positioning of a 20-foot traveled portion within the road allowance. Numerous exceptions apply. For example, a 10-foot utility corridor or 20-foot laneway can be approved and often required to resolve a local design problem. (i.e. Coombe Lane) Today a newly created road is often specified as 20 metres in width.

The word 'road' has not been a consistent term through the many years of filed survey plans, statutes, etc. and not all legal roads are necessarily 'constructed'. A strip of land between two parcels may merely be a strip of Crown-owned land which was a gap created by a *Land Act* survey. A legal 'road' may sometimes be labeled on surveys under other names and some can be archaic labels:

- highway
- waggon road (sic)
- avenue
- street
- lane, laneway
- walkway
- public reserve
- road allowance
- esplanade

Thus the reader must be careful about interpreting early maps. The use of the term 'Road' does not necessarily mean the property is a public highway. A starting place for exceptions is section 35 (1.2 parts 'a' thru 'j') of the *Community Charter*. Again, for the purposes of this report, the term “road” is used.

## 2.2 How are Roads Created?

There are three common kinds of surveys which create roads. None of these, by themselves, create the ownership by the municipality. Ironically most of the roads in Belcarra were created before the municipality. The actual ownership of roads by the municipality was by the transfer which was part of the Municipal incorporation.

An initial form of survey is often done under the *Land Act*, usually to define a primary parcel and/or road access. With unique identifiers the Crown may later manage or dispose of the property in question. Such form of survey often happens before the creation or extension of a municipal boundary.

A second, but more familiar kind of survey, is creation of a road by way of the *Land Title Act*. The deposit of a subdivision or other plan 'dedicates' part of the lands as new road to serve the subdivided parcels or to access the land beyond, therefore protecting the options for future development and further subdivisions. It should be noted that current *Land Title Act* (section 75) procedures provide that road access of 20 metres in width is required at intervals of not less than 200 metres in urban areas.

A third kind of road may also be created under various statutory instruments (other acts) for purpose, such as forestry, mining, highway widening, railway, etc.

At any point the creation or extension of a municipal boundary may, create municipal ownership in these roads.

Municipalities also acquire roads or related lands (possibly for future roads) in a number of ways. The land acquisition processes are not always driven by deliberate planning but can be the product of statute or sometimes indirect actions. These include:

- Park dedication by survey plan
- Road dedication by survey plan
- Purchases
- Tax forfeitures
- Gifts



- Transfer from another level of government
- Park closure
- Exchanges
- Expropriation

### 2.3 Historical Background of Roads in Belcarra

It is important to understand how roads came to be the property of the municipality. It is mostly a path of government transfers in statutes that include acts, regulations, and the registration of plans in Land Title Offices. The 'deposit' (filing) of a plan in the Land Title Office may create a road under provincial jurisdiction until a municipal entity is created. Even then some roads may be excepted from this transfer. Each site requires review and confirmation of status before reaching conclusions. Most roads in Belcarra came under municipal administration when the municipality was created. But ownership of most roads came later upon the assent to the *Community Charter* in January of 2004. Any municipality must ensure which roads are theirs by virtue of the *Community Charter* or if it is still under administration of the provincial government (section 42 of the *Transportation Act*.) For Belcarra the usual assumption is municipal ownership, as there are no known Provincial Highways passing through the community. Roads associated with parks also require review.

Belcarra appears to have been first subdivided into recreation and settlement lots in 1906 and 1908. They were subsequently Crown granted and the original community was named as Belcarra in 1908. These original surveys of Belcarra created a network of named and unnamed roads.

Surveyed roads of 66 foot width were created which are now known as Belcarra Bay Road and Bedwell Bay Road. However in areas such as Coombe Lane 'road allowances' of 20 feet and a 'half road' of 33 feet were surveyed. Most roads were not constructed or even cleared at the time of the early surveys. Surveyed 'legal access', constructed or not, had to be offered for each lot even if access would prove impractical by today's construction standards or vehicle capabilities. Roads were often created recognizing topography, general provisions for access to shorelines, creation of waterfront setbacks, or to meet an arithmetic standard for public access at specified intervals.

"Woodhaven" is a subdivision surveyed on plans deposited in 1911 and 1917 by the federal government on their lands just to the east of the small community of Belcarra. The original community legal surveys for Woodhaven, defined 637 lots by 1911 in Phase One, but also created 446 lots in Phase Two. The latter, mostly being unsold, were withdrawn from sale by

the Federal Government. The subdivision named many roads such as Marine Avenue, Fulton Avenue, Tatlow Road, and Munroe Crescent. Subject to further research we understand the 'roads' became the property of the Province of British Columbia upon the 'deposit' of the legal survey in the provincial Land Title Office in 1911/1917. Unsold lots were eventually transferred to the Province of British Columbia in 1930, together with other Crown lands beyond the immediate community. There have been other subdivisions of private land and other roads created since then. Most of the presently known roads are the result of the original Belcarra/Woodhaven community designs and a few other subdivision plans dedicating roads.

For historic reference, part of the Woodhaven legal plan was cancelled in 1964 eliminating more than half of the original, but unsold, lots. Most of these lots lay up the hill and on the south side of Main Avenue and Bedwell Bay Road. The lands affected by the lot cancellation extend down into the north side of the Fulton Creek watershed. The reader should rely only on current official maps of the municipality or the Province of BC.

Belcarra is comparatively small and there have been few demands to purchase, lease or otherwise occupy roads. Prior to the incorporation of the Village of Belcarra the occasionally needed occupation agreements for community residents were met by the Province of BC through representatives within the Ministry of Highways. Up to 1979 several road use permits were issued by the Province of BC. After 1979 the Village of Belcarra issued road use permits and some 'Highway Encroachment Agreements (HEAs.)' Record keeping before and after 1979 may require updating.

Another factor influencing lands and roads in Belcarra was the 1980's initiation of Belcarra Regional Park enveloping much of the community. It was, and still is, managed by Metro Vancouver (Greater Vancouver Regional District). The park has impacted the original purposes of several Belcarra/ Woodhaven roads which are a continuing subject of review and discussion with Metro Vancouver Parks.

Many of the green spaces in Belcarra are held or regulated by other levels of government. (Greater Vancouver Regional District and the Ministry of Forests, Lands, and Natural Resources). Their holdings include parks, Crown reserves, and in Belcarra - port authority rights. Each of these can limit the Village's property options.

Belcarra does not have a formal land department, park program, housing program, land bank, or right of way program. But there are bylaws affecting use of roads (see Municipal Context section #6). Belcarra nevertheless has an extensive network of roads. Their conditions range

from constructed, partly developed or vacant. The rights to most of these roads today are vested in the Village of Belcarra under the *Community Charter*. As a key reference date, the transfer of road responsibilities from the province occurred upon creation of the Village on August 22, 1979. As stated earlier the ownership of roads (municipal highways) occurred upon the coming into force of the *Community Charter*, January 1, 2004.

### 3. Public and Private Uses of Roads in Belcarra

Belcarra's roads have many current and historical uses. The primary use is the conduct of public traffic and the roadworks necessary to convey that traffic. Other uses such as overhead utilities, pipelines, driveways, and drainage may be either public or private (made by residents and societies). Utility systems may be publically owned or private but their use of roads is closely regulated. The business of roads is for traffic and any other use is allowed only under the authority granted to the municipality under section 35(11). Paraphrasing this wording any road occupation must be authorized. Consequently a review of road use/occupation is required.

#### 3.1 Public Uses

Road uses are intended for public benefit and may include many more needs beyond everyday road traffic. These other uses often include a full range of municipal management needs. As established public assets these road uses do not require consent of the adjacent property owners. The following are examples of 'public use' of roads in Belcarra as identified by Village staff:

- Water access
- Michael Rosen Receiving Building
- Tatlow Pump Station and reservoir
- Public utilities
- Local road
- Drainage and groundwater management\*
- Defined watercourse
- Retaining structure
- Access road (i.e. Sasamat Camp)
- Service road
- Emergency access (i.e. Sasamat alternate route)
- Hydro transmission easement
- Trail network
- Radio sightline, navigation and communication systems
- Within Regional Park Boundary
- Landlocked, adjacent to Regional Park
- Designated Municipal park
- Access to Crown lands, parks or private lands beyond

- Memorial bench
- Midden or heritage and cultural resources

\*Drainage deserves special mention here. For Belcarra and eastward at the Woodhaven Villa Lots most natural or planned drainage, as well as utilities and road paths, are confined to the boundaries of surveyed roads, lanes and waterfront setbacks. But, as often observed, effective drainage is a changing circumstance, made more complex with human activity. Provision is made in the *Community Charter* for a municipality to assume all MOH drainage easements.

There are also the needs of many public bodies. Such public agencies are conspicuously governmental in nature but others are not so obvious such as school boards, special operating agencies, agency partnerships, housing management, harbour use, etc. Some of these bodies may appear to be private but clearly have public needs in mind. The public is entitled to use the public roads managed by the municipality. Some roads in the municipality may be within the Regional Park boundaries. This needs further investigation to determine ownership.

### 3.2 Private Use of Roads

Roads in Belcarra have not always been occupied and adapted as public thorough-fares. While some roads function in the various public ways listed in section 3.1, others function in ways necessary or convenient to owners of adjacent or nearby properties.

It should be noted again that this summary of the resident uses of roadways in Belcarra is a result of the resident petition to consider road revenues. Council did not originally intend to examine the various road uses and, since they are now identified, a suitable management program is required.

Across the community adjacent landowners have historically made casual use of roads and the scale of the informal occupation has grown over the years. Few, if any, of these private activities have been fully researched or supported with legal site drawings. Several uses are authorized or permitted in some fashion. To understand how this type of occupation has occurred one must recognize that Belcarra became a municipality in relatively recent times and even the records of then-named Ministry of Highways are difficult to access, if they were archived at all. Thus the less stringent standards and practices of years-gone-by may be a factor. Some level of permitting by either the Ministry of Highways or the Village may have occurred in past, but documentation is sparse.

At some point in future, any existing private road use may come under review. The possible reasons are several; road use application, building permit, neighbor complaint, adjacent

property activity, zoning, road repair, or a utility problem. Some private uses, upon application and subject to review, may be considered acceptable. Some may be considered to constitute a “trespass”. This is not always to suggest deliberate trespass. There can be justifiable reasons such as inadequate boundary evidence, changes in ownership, misleading fence lines, etc.

There is presently no formal review process. In the absence of a formal review process the municipality reserves the right to consider and determine that an action by a property owner constitutes trespass. Each identified road occupation must be reviewed objectively with suitable research. Continuing occupancy may require market rents and/or taxes, while others may not. The Belcarra municipal administration recognizes that landowners require a more secure system where legitimate needs can be formalized, secured, and where possible, made assignable/insurable. As with moorage, formal road use tenure will likely add value to the affected private property. Therefore a modernization of the consent and tenure process for Village roads is needed. Further to this, a constructive review of road occupation needs and suitable tenure options is an appropriate exercise for the municipality.

Following are examples of private use of roads from pre-incorporation to present:

- Driveway access, bridges, culverts
- Septic field or storm drainage discharges
- Well/pump/electrical line
- Private utility (companies that operate hydro, natural gas, cable, telephone)
- Privacy/Security (fences, hedges, natural barriers)
- Private occupation (i.e. parking, extension of landscaping, structure encroachment, yard waste disposal)
- Access to navigable water

## 4. Revenue Generation Options from Municipal Roads in Belcarra

As requested in the community petition the particular scope of this discussion paper is to provide council and the residents with options for generating revenue from the roads contained in the roads catalog. The petition read:

*“We, the undersigned property owners of the Village of Belcarra, insist Council seek alternate options that would yield revenues to facilitate funding the increased costs resulting from the water system project. We request Council immediately explore all other possible sources of funding to alleviate these increased costs to taxpayers. These revenues might be generated by the re-designation of undeveloped road allowances &/or acquisition of Crown &/or Metro Vancouver lands which could be developed and sold as building lots.”*

Belcarra roads were never originally intended as mechanisms for land development revenue. In BC many other ideas for community revenue generation have been considered and several have been put to use. But even with the most creative revenue ideas, the municipal management priorities must be established before any road asset can be considered for alternate use. Where a road is nominated as suitable for alternate use, a wide range of criteria and possible resolutions must be considered. Nevertheless, revenue from roads may be generated in the following ways:

- Permanent disposition
- Tenure agreements
- Taxes and charges

Each category is defined and discussed briefly in the sections that follow. There may be a limited number of additional ways to identify revenue benefits from roads. There may also be unique situations which require specific research beyond the scope of this report. These include:

- Roads and trails within Belcarra Regional Park such as Orders-in-Council, and details of legal surveys showing roads within or adjacent to the park
- Access points to the park
- Documents pertaining to the designation, gazetting of roads and road closures by the Ministry of Highways before 1979

## 4.1 Permanent Dispositions

The term “dispose”, as used in the *Community Charter*, is defined in the *Interpretation Act* and means “to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things”.

Disposition therefore may mean selling, but it can also mean leasing, or other rights such as timber, water, grazing, and a host of other encumbrances on a property.

For the purposes of this report, 'permanent dispositions' will refer to the permanent divestiture of municipal land which may include sale, exchange, or transfer. Any disposition of public land is subject to due process and legal considerations (please see Legislative, Regulatory and Legal section).

### 4.1.1 Sale

This is the method of disposition most often thought of in the planning process. It refers to the conclusive act of one party paying good consideration (usually cash) in order to become the exclusive owner of property. Under the *Community Charter*, municipalities do not have to make the lands or improvements they intend to dispose of available to the public for acquisition.

### 4.1.2 Exchange

There are other ways to transfer property. The concept of an exchange may include a combination of values recognized by one or more parties. Exchange is not always as simple as one acre for one acre. The exchange may include other values such as metre for metre, appraised value, frontage, zoning and development rights, or combinations of these and cash.

### 4.1.3 Administrative Transfer

This is a disposition instrument used between governments. It has most recently been used for airports, and properties held in the name of the Crown. A transfer may be used for surveyed or unsurveyed land. A transfer is usually done in the form of an Order in Council which government authorizes a department to receive or dispose of lands. The creation of the Village of Belcarra was one such form of transfer insofar as roads are concerned.

### 4.1.4 Easements and Statutory Rights of Way

These documents are encumbrances that are more or less permanent in nature. They can be cancelled when the need ceases. An easement is a right of access which can be registered on a property title. It is often registered over one or more parcels. Most typically it is for access granted over one parcel (a servient right) for benefit of an adjacent parcel (a dominant right).



The above disposition methods are permanent in nature. Accordingly they are not always suited to the more lasting needs of a municipality. Therefore other choices are available and these are called 'tenure agreements'.

In the case of roads there is no title for the road or dominant right. Therefore a registerable document in the form of a statutory right-of-way (SRW) is created for the parcels. SRW's are used for power lines, railways and pipelines, including municipal lines. If a road is sold or transferred the encumbrance usually remains in force on the property. In this manner Council may grant relief to an encroachment (*Community Charter* section 35.11).

## 4.2 Tenure Agreements

"Tenure agreements" refer to a variety of non-permanent disposition mechanisms whereby the municipality retains ownership of the land, collects monies for the use of public land by private parties, and maintains the right to reclaim the land if and when the municipality deems the site to have a public use. Municipalities should ensure they file copies of the license and lease agreements with the BC Assessment Authority (BCAA) to ensure they are placed on the tax roll. Even if tenures cannot be confirmed, the drawings of improvement locations should be provided to BCAA. Following is a discussion of various forms of tenure agreement.

### 4.2.1 Permits

Permits are a very low level of right granted to occupy land. The permit is usually short term, often measured in days, one permit at a time. It cannot be transferred, and has little or no interest in land. It might be useful for weed control, driveway construction, parking, storage, or landscaping on a roadway. It is also useful for an agreed resolution of a trespass to encourage cleanups and reclamation. Permits are not suitable for structures or taxable improvements and usually there is no taxable obligation to the land owner. Very little revenue is currently generated in the form of a one-time fee. A parking meter payment might be considered a form of permit fee. There is no exclusivity or right of possession to the permit holder.

### 4.2.2 Licenses

Licenses are suitable for occupation of a road on a continuing basis. The term 'license of occupation' is also often used. They may be best suited to fences, portable sheds, private driveway improvements such as paving stones, water well, etc. (note that surface water is managed separately and water rights legislation is evolving. Improvements associated with a spring however may be taxable). Licenses cannot transfer to a new owner, but a new license may be applied for by that new owner. There may be an application fee and an ongoing rent. The rights may be taxable. In Belcarra, this document is currently referred to as a 'Highway Encroachment Agreement'. A license is also not strictly exclusive, although a building or vehicle

may be locked. Other users may have access to the same lands. Permits may also overlap each other. A license will usually have a fixed term. Many conditions and restrictions may be added to individual licenses. Licenses are not usually transferable but provision may be made to renew them.

#### 4.2.3 Leases

A lease is intended to offer a character of exclusive use for a fixed term. There may be significant ongoing revenue from annual rents and taxes. There can be a processing fee. It can be added to the tax roll for the community. It may or may not be registered in the Land Title Office to benefit a necessary part of a private parcel, although registration will require a survey. This is important if the occupation forms part of the value of the home, and where the landowner requires the assurance that it can be sold with the home. In some respects it is as strong a right as having title with some notable differences. An early cancellation or early renewal proviso can be added. The municipality may apply other restrictions as required. Cancelling a lease early may result in penalties, costs, and potentially refunds. They are difficult to amend mid-term without consent. Prudent use of early termination provisions can be established at the outset. Suitable safeguards for site conditions must be established for commencement and termination. Usually the landlord is restricted from entry on the lands during the term unless the lease has provisions for it. A registerable lease is often required to secure mortgage financing where there are building encroachments. Leases usually contain a clause stating that they are transferrable only with consent, and on the provision they are in good standing. Transfer of a lease usually will require the signatures of the transferor, the transferee, and the Village.

#### 4.2.4 Franchise Fees

The BC Utility Commission levies charges on public utilities occupying municipal roads. These are often described on the individual land owner's bill, and when collected they are passed on to the municipality. It may approximate 3% of the particular utility bill. In BC legislation this is revenue from a 'franchise' managed by the Province of BC.

*"BC's local governments have long charged franchise fees to utilities that use municipally-owned streets, alleys, poles, conduits and rights-of-way. These franchise fees are typically charged to electric utilities, pipelines, natural gas companies and telephone and cable companies.*

*Revenues that may be raised from natural gas providers are an example of the importance of franchise fees. For BC's local governments, up to three per cent of the value of natural gas sales within municipal boundaries are payable as franchise fees."*

Source: Ideas For a 21st Century Vancouver <<http://www.thinkcity.ca/node/289>>

The current structure of tenure agreements in Belcarra is likely not in keeping with market values for land use, related taxation, cleanup, bonding, etc.

### **4.3 Taxes and Charges**

There are further means to obtain revenues from road properties, beyond those of dispositions and tenures. “Taxes” refer to property taxes which would apply to land that is sold or leased. These have been addressed in previous sections. “Charges” refer to a variety of other revenue-generating possibilities. Some examples include:

#### **4.3.1 Tickets, Fines, or Damages for Unauthorized or Improper Use**

Penalties may be levied for certain actions such as burning, parking, abandoned and uninsured vehicles, litter, dumping yard waste, soil removal, or actions not yet specified in bylaws. This may extend to certain traffic or parking infractions or where trees have been removed without authorization.

#### **4.3.2 Application Fees and Administrative Charges**

Negotiating a tenure agreement is often a time consuming practice. Municipalities may levy specific processing charges and request deposits which are forfeitable whether a tenure agreement is entered into or not. Factors to consider may include public meeting costs, appraisals, etc. There may also be additional costs for repeated inspections where specified compliance is not forthcoming i.e. - how many inspections will a \$25 permit fee allow? Suitable enabling by-laws may be required. Appeal process for costs and decisions may also be advisable. All such services may need to be on a cost recovery basis. (*Community Charter* section 194)

#### **4.3.3 Servicing Costs**

Road tenures may be subject to additional charges for impact on water and sewer servicing. Some tenures may have needs which require engineering costs, changes to grades, manhole or valve locations or other physical changes to roads. The costs to the municipality require a method of recovery/reimbursement. This may need to be determined on a site-specific basis.

#### **4.3.4 Back Rents, Fees, and Payments in Lieu of Past Taxes**

Back rent for trespasses or past unauthorized use is unlikely but may be reviewed on a case by case basis. May be set by policy for a fixed retroactive term or fees in lieu of past taxes may be levied for past occupation. The legal mechanism and precedents for back rents or occupational rents should be investigated, possibly in conjunction with Province of BC practices.

## 5. Legislative, Regulatory and Legal Considerations

### 5.1 Federal Context

The mainland Crown colony of British Columbia from 1858 until 1866 was governed by the general principles of 'British Common Law' or those regulating enactments that Britain, the Governor of the Colony and the judicial representatives deemed appropriate. Trails and wagon roads were unsophisticated and were often built/maintained by military, private or community effort.

Some natural resource functions and government services were formalized when the new 'Province' of BC was created in 1858. Other rights transferred from BC to Canada when BC joined Confederation in 1871. Land use law pertaining to roads in the Province of British Columbia has evolved through this progressive change of laws since 1858. This has resulted in the three tiers of legislation operating today; the most senior tier, of course, being the Government of Canada.

The federal government acquired land from BC as part of transcontinental railway negotiations and joining confederation. Some of this land was at the present day location of Belcarra. Eventually some of it became the Woodhaven subdivision.

In the Belcarra road context common law riparian rights still apply. Also harbour and navigable waters are both governed by Canada statutes. Other federal statutes may also apply.

### 5.2 Provincial Context

After the 1858 amalgamation of two colonies to form the Colony of British Columbia a suitable public works program began. In 1866 the colonies were newly-constituted as the Province of BC and the eventual appointment of a responsible cabinet Minister that we came to know delivery of Provincial highway programs. For Belcarra all roads were administered and maintained by the Province until 1979 when the Village of Belcarra was incorporated under the Municipal Act.

As a guide the following Provincial considerations must be addressed when a municipality evaluates surplus municipal roads for disposition, as required through various legislative instruments ("Acts" and "Regulations"), and principally the *Community Charter* [SBC 2003] Chapter 26.

### 5.2.1 Ownership and Possession of Highways

The municipality claims its ownership of the roads under the empowering legislation of the *Community Charter* which came into effect January 1, 2004. Sections 35 to 46 of the Charter establish the right of highway/road ownership granted to the municipality.

### 5.2.2 Conditional Grants

Some municipal property originates as 'conditional' grants from the Crown such as the Belcarra office and works yard. Crown grant examples also include limitations for purposes such as hospital sites, school grounds, airports, reservoirs, lagoons, and parks. When the land is no longer used for its intended purpose, it must be returned to the Crown. These rights may be at times amended when property is transferred between government agencies. The value of the improvements may sometimes be claimed by the municipality as the Crown is usually interested in efficient use of the land. However, any adverse condition of the improvements may form liabilities, conceivably exceeding the value of the land. Even between governments fair market value is determined. Such grants may affect road negotiations and are peculiarities to be aware of as they may not be noted on title.

### 5.2.3 Rights of Resumption

There is an opportunity for the Crown to seek a return of a closed road. In the case of 'surplus' roads the Crown has rights of road resumption stated in the *Community Charter* (section 35.) Such rights must be released by applying to the Land Title Office. The municipality may need confirmation that the resumption right has been cancelled. One such right involves roads which are in or adjoining a provincial or regional park.

Another example is the requirement to dedicate beds of bodies of water, correct natural boundaries or require flood corridors, any of which may be applicable in Belcarra. Sasamat Creek may have potential flood considerations.

### 5.2.4 First Nations

Initial information from provincial staff indicates that cancelling the right of resumption by the Crown may invoke consultation with First Nations, recognizing the Crown has a duty to consult with First Nations. The municipality will need to receive senior level direction on what consultation is required at the time of undertaking. First Nations consultation is beyond the scope of this document.

### 5.2.5 Community Charter

In Belcarra the most profound factor for road closure options lies in the difference between shoreland and upland locations. Shoreland has frontage on natural boundaries of bodies of water. Upland has no frontage on bodies of water (note there are various factors which surveyors must consider in defining these terms). It is a requirement that road closure

candidates, which have waterfront, can only be alienated if proceeds are directed to a reserve fund to obtain equal or better waterfront land providing access to the same body of water.

Since several of the catalogued Belcarra roads have some degree of water frontage the proceeds have limited use. The *Community Charter* (section 41.1) states that community-owned waterfront can only be exchanged for land of at least equal benefit to the public (see table below as extracted from **Appendices** of this discussion paper).

Site Index #	Location
4	Marine Ave North Waterfront North-east of Watson Road
5	Marine Ave Waterfront West of Senkler Rd
14	Midden Rd West of Belcarra Bay Rd
15	Bedwell Bay Rd West of Belcarra Bay Rd
16	Salish Rd West of Robson Rd
17	Whiskey Cove Lane West of Cul de sac
18	Coombe Lane West of Roadway.
23	4700 Block of Belcarra Bay Rd
26	Whiskey Cove Lane W of Cul de sac
27	Belcarra Park North of Bedwell Bay Rd
28	Belcarra Park North Midden Road
29	Road at 100 Block of Turtlehead Rd
30	Turtlehead Cul de sac

Alternatively a reserve fund for acquiring comparable land must be established with the proceeds of sale. This places limitations on Council for using the proceeds of waterfront land. Proceeds would need to be used strictly for waterfront access projects.

A further restriction requires that (net) proceeds only be used for land, capital assets and capital programs as noted above. They cannot be used for municipal operations.

The specific wording from the *Community Charter* is:

**41** (1) *As a restriction, if*

- (a) a bylaw under section 40 (1) (a) [authority to permanently close] affects a highway, or part of a highway, that provides access to the ocean or a lake, river or other stream or watercourse, and*
- (b) the municipality is proposing to dispose of the highway or part, the municipality may only dispose of that highway or part if*
- (c) the municipality is exchanging the property for other property that the council considers will provide public access to the same body of water that is of at least equal benefit to the public, or*
- (d) the proceeds of the disposition are to be paid into a reserve fund, with the money from the reserve fund used to acquire property that the council considers will provide public access to the same body of water that is of at least equal benefit to the public.*

*(2) If the effect of*

- (a) a proposed highway closure under section 40 (1) (a), or*
- (b) a proposed highway alteration will be to completely deprive an owner of the means of access to their property, the municipality must either*
- (c) obtain the consent of the owner before the owner is deprived of access, or*
- (d) in addition to paying any compensation required under section 33 (2) [compensation for injurious affection], ensure that the owner has another means of access that is sufficient for this purpose.*

### **5.3.2 Land Title Act [RSBC 1996] Chapter 250**

The Land Title Office is responsible for the system under which land ownership is registered.

The Land Title Act sets out certain requirements for this registry to function, i.e. new subdivision of waterfront properties/public access to water at defined intervals such as 400 metres apart in areas with lots exceeding 0.5 ha in size and 200 metres in subdivision areas with smaller lots.

### **5.3.3 Heritage Conservation Act [RSBC 1996] Chapter 187**

The purpose of this Act is to encourage and facilitate the protection and conservation of heritage property in British Columbia. Archeology statutes apply to both private and Crown Land. The legislation is managed by the Ministry of Forest Lands and Natural Resources. There have been archaeology potential maps completed for some areas in Belcarra and these have been provided to the municipal office. Archaeology records are not generally circulated in order to protect the sites.

#### 5.3.4 Environmental Management Act [SBC 2003] Chapter 53

The *Environmental Management Act* [SBC 2003] Chapter 53 and its accompanying *Contaminated Sites Regulation* provides environmental management tools to protect human health and the quality of water, land and air in British Columbia.

Prior to acquisition or disposal of any real property interest (including exchanges) the municipality should establish the potential for environmental claims regarding contamination. However, several agencies have now established that either a Stage One Preliminary Site Investigation (BC) or Phase One Canadian Standards Association (CSA) Site Investigation (Canada) should be conducted on the subject property to establish if there is or ever has been potential for contamination.

Contamination potential in most road closure candidate locations is most probably limited to the adjacent residential activity. This will most often take the form of a heating oil tank, or tanks. Therefore environmental considerations can sometimes be addressed by fire department records to establish the presence and condition of any past or present oil tanks.

Physical inspection of the properties is usually done by third parties who have owners' consent for access. In all cases the minimum requirement from a purchaser or vendor should be a Site Profile as set out in Schedules 1 and 2 of the *Environmental Management Act*.<sup>1</sup>

#### 5.3.5 Mineral Tenure Act [RSBC 1996] Chapter 292

Most Crown minerals are administered by the province through placer and mineral claim systems. Minerals and mines within municipalities are usually reserved from further staking but some mineral rights may be under private ownership. Mineral rights in the Belcarra vicinity have not been investigated in the scope of this report. A nearby quarry is in the mineral records. A brief review of BC mineral titles on-line suggests the community is under a reserve from staking and the only existing tenure is a quarry to the south. The Ministry may be contacted for a formal status opinion.<sup>2</sup>

#### 5.3.6 Riparian Area Regulation

The *Riparian Areas Regulation* (RAR) OIC 837-2004 of the *Fish Protection Act SBC 1997* requires local governments to protect riparian areas (the interface between land and a river or stream) during residential, commercial, and industrial development.

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<sup>1</sup> A site profile is a very brief screening form for identifying potentially contaminated sites. This summary is created from readily available information about a site, including a basic description and its past and present uses. The form is typically filled out by a site owner or a qualified consultant acting for the site owner. Based on the information provided, a site profile could trigger a site investigation.

<sup>2</sup> <http://www.empr.gov.bc.ca/Titles/MineralTitles/mto/Pages/default.aspx>



### 5.3.7 Groundwater Protection Regulation

The *Groundwater Protection Regulation of the Water Act [RSBC 1996]* Chapter 483 (soon to be the *Water Sustainability Act*) establishes standards to protect ground water supplies by requiring all water wells in British Columbia to be properly constructed, maintained, and, at the end of their service, properly deactivated and ultimately closed.

### 5.3.8 Timber and Range

Note there are several lots on the south side of Main Avenue. The land behind Main Avenue and these lots including the north side of the Fulton Creek Watershed are Crown-owned and not Regional Park. The trees on municipal roads are considered as owned by the municipality and may have commercial value. Trees on Crown land are managed by the BC Ministry of Forest Lands & Natural Resources. In a few Belcarra cases trails passing through Crown land may provide access to range and timber resources.

## 6. Municipal Context

In January 2004 the Village of Belcarra became the vested owner of all roads within the Village boundary, with one general exception, regarding roads within a 'regional park' within the municipality (*Community Charter* section 35.2.d). This indicates a need to review some of the roads in the Belcarra catalogue to establish their status. Some adjoin parks, some run through parks, several appear to be excepted from the orders creating parks and therefore interpretation may be ambiguous. This requires a reading of BC Order in Council documents and other documents since the transfer of roads is not always to be found in the Land Title Office documents.

The Village of Belcarra currently has by-laws and policy relative to municipal road use. Following is a review of these documents.

### 6.1 Official Community Plan Bylaw No. 435, 2011

The Village of Belcarra Official Community Plan (OCP) is a bylaw that defines the general direction for planning, zoning, development, permits and character of the community for the future. It is the tool for planning the nature and location of future land use, development, and services. The OCP is a guide for the collective decision making of a community - for its Council, its residents, businesses, and servicing agencies. Its vision, policies, and recommended actions should guide the future of the community. The OCP reflects community consensus, established through a consultative process, by determining a desirable framework for land use, development, and servicing. The documents are usually reviewed in five year cycles. Uses of roads, if considered, must not be contrary to the Official Community Plan.

Guiding principles and community values applicable to roads are reflected in statements relative to:

- Public access to water
- Viewscales
- Trees and community green space
- Habitat corridors

## **6.2 Zoning Bylaw No. 253, 1996**

The principal purpose of this bylaw is to regulate development in the municipality for the benefit of the community as a whole. Relative to roads, this bylaw requires that no land shall be used or occupied unless in conformity with this bylaw, except as otherwise provided for by statute.

## **6.3 Encroachment Agreement Marine/Senkler Area Bylaw No. 411, 2008 Highway**

This document sets out the terms and conditions for regulating the use of encroachments over defined portions of Marine Avenue and Senkler Road. Through specified term agreements the encroachments, which vary in size, are granted by the municipality to individual property owners or registered group wharf societies. The municipality charges an annual flat fee for use of the municipal lands. The fee at the time of writing this report is \$80.00 (individual property owner) or \$110.00 (group wharf society).

## **6.4 Policy No. 137 Private Use of A Municipal Road Right of Way**

The Village of Belcarra recognizes that owners of property may require the use of municipal land for private use. This policy provides guidelines to administer the use of existing and proposed uses of Municipal Road Rights of Way by private groups of private residents within the Municipality. Policy 137 includes the following statement of principle:

*“Municipal Road Rights of Way will remain in public domain. The Municipality will always retain the right to reclaim the land for public use. All uses are to take into consideration the quiet enjoyment of public land by the community; the potential impact on the surrounding area; and the ability to return the land to its original condition.”*

## **6.5 Parking Regulation and Enforcement Bylaw No. 350, 2011**

Relative to the private use of roads, the purpose of this bylaw is the regulation, control or prohibition of the stopping, standing or parking of vehicles within the municipality.

## **6.6 Roads and Traffic Bylaw No. 9, 1980**

The purpose of this bylaw is to regulate traffic and the use of roads within the Village of Belcarra.

## 7. General Legal Considerations

The following section discusses a few further thoughts about the legal side of road administration.

### 7.1 Legal Status of Individual Roads

There is often confusion about access names. It is important to note that a 'road' or 'road allowance' is not the same as an 'easement'. In Belcarra a 'road' or 'highway' is a publicly-owned and unencumbered interest which is usually ungated or unfenced. An easement or statutory right of way usually specifies a limited right of use by limited parties. These latter rights are usually not open to the public unless specifically stated. Where a road closure is planned there is an obligation to offer a suitable accommodating tenure to an occupying utility. This may involve rerouting or creating an easement, among other things.

### 7.2 Trespass, Encroachments and Unauthorized Use

In some cases the review of Belcarra roads indicates prior and/or continuing private use. In each case sensitivity to the circumstances is required. For negotiations detailed drawings are necessary. Such survey is usually done by a qualified legal surveyor to form the basis for negotiations and in some cases possible legal action. Encroachments may be found to include waste dumping, culvert/discharges, yard waste, uninsured vehicle parking, storage sheds, or alternate access to property. Fences and landscaping often exceed the property boundary. Septic fields and buildings may approach or exceed setback limits or even cross property boundaries. In some cases there will be constructed improvements that are not within the respective lot lines or prescribed setbacks.

Some verbal or written agreements of the past, relative to private use of public land, may have the legal status of 'consent' without any lasting effect. The municipality is entitled to affirm vacant possession of roads for traffic or public purposes and in some cases revocation of a prior consent is in order. Where there is unauthorized use the municipality has the right to exercise the management authority as owners granted under the *Community Charter*.

### 7.3 Reacquiring Land

There is a principal to recognize if land for any reason is 'sold'. Once sold it cannot normally be reacquired for the same relative price. Acquisitions by government require added costs such as

hearings, bylaws, appraisals, negotiations, and sometimes evictions. No community should make the mistake of selling a road only to reacquire it a few years later.

#### **7.4 Precedents are Found Elsewhere**

Circumstances often have precedents to use as guides. There are existing or expired Highway Encroachment Agreements in other communities. Diplomatic solutions are possible.

Negotiation is a key tool for any renewals or discontinuations. There are considerable precedents in law for circumstances which involve expropriation, recovering damages, rental rates, relocation costs, and terminating unauthorized uses. Precedents should be used with great caution.

#### **7.5 Natural Attributes of the Site**

Natural attributes of any site are also critical to determining if there are revenue implications. These extend to several general parameters which we endeavor to list below:

##### **7.5.1 Size**

Property suited to survey as a future stand-alone lot is often determined by size. In many Belcarra road-end examples the size may exceed that of the adjacent lots. Alternatively, council, with due consideration to the minimum lot size and configurations, may elect to sell undersized properties if they do not compromise adjacent lot sizes. Current OCP parcel size guidelines indicate a minimum lot size of 0.5 acres.

##### **7.5.2 Slope**

The surplus property may be of little development value if the slope exceeds 20%. However, consolidating a closed road with an adjacent parcel will still have considerable value if it also increases lot size, development density, has timber, provides alternate access, improves privacy or provides other value to an adjacent purchaser.

Conversely, a level site can add value to a lot that needs improved sewage disposal, more parking, building area, view, etc.

##### **7.5.3 Drainage and Groundwater**

The Belcarra community is in a biogeoclimatic zone that periodically has severe precipitation. Surface runoff to and from streets and other municipal properties can become complicated and damaging if runoff is not appropriately diverted or channeled. The public works department may contemplate whether a specified ditch, right of way or a gross right of way (over an entire parcel) is appropriate. This will affect value. Similarly a negotiation with an existing adjacent owner may provide an opportunity to trade or provide a credit for resolving an existing requirement. A decision to dispose of flood prone lands can also create a liability for the

municipality. Communities are increasingly being held accountable for mapping, setbacks, flood control and protection of groundwater. This can be offset by proper disclosures and planning.

#### 7.5.4 Soils

There are two basic needs for proper soil suitability on any lot. The first is for accommodating water-borne sewage disposal. The second is the suitability for building construction.

In most conventional septic disposal fields any enlargement of a lot is likely to improve sewage handling options. However, modern enhanced septic system technology will work in smaller spaces. The condition of the septic system on any given lot could motivate adjacent owners to purchase closed roads. Where the functioning quality of any septic system is undetermined, the municipality may be able to obtain a specialist's opinion. This can be relevant where one or more adjacent owners have competing septic disposal needs.

Similarly slope, water table, bedrock, density, and other ground characteristics determine where, how, and if a building, retaining wall or driveway should be constructed. It is the geotechnical nature of a property that will determine what type of structure can be built and what the septic disposal options may be. Again this may contribute to the need for adjacent owners to compete to acquire adjacent vacant roadways.

#### 7.5.5 Accessibility

A prevailing concern for characterizing road ends or under-used roads is to protect viable access for immediate properties and lands lying beyond. Belcarra has many cases of private lot owners who make use of an undeveloped road for their sole means of access. In most of these cases the right of access has been granted by the appropriate jurisdiction. And often this may be due to wetness, steepness, etc. section 41.2 of the *Community Charter* places a limitation on disposal of roads where it may cause a loss of access to a landowner thus triggering the need to obtain consent or payment or both. As discussed elsewhere it is essential that viable access routes be retained for both public and private users - now and for the future. In rough ground there is no single formula for valuing the unique character of access on each lot. It may be a positive or a negative feature of a lot. Owners will have different ways of perceiving the access attributes of each lot. An example is positive and negative aspects of having a corner lot with double frontage. Modifying access (adding, altering or removing) may often be an unpredictable negotiating task and may require compensation, non-cash incentives, modified infrastructure, landscaping, cease and desist orders, expropriation or a blend of such tools. Each proposed change in access must be reviewed on its own merits for suitability, necessity, etc.

As always, critical future considerations will be the expansion of a community trail system, utility extensions, transit, evolving technology and social habits affecting the political climate. The needs of Belcarra today could not be accurately forecasted when the community was first

surveyed, and it is highly probable that residents of Belcarra today cannot forecast the access needs of Belcarra a century from now.

#### **7.5.6 Habitat and Ecosystems**

Communities are increasingly aware of the public interest and the regulatory changes which are inspired by natural habitat. The Province of BC and the Government of Canada have established endangered and threatened species legislation. Those statutes are linked to international treaties. Some communities have tree bylaws (an authority contained in the *Community Charter*). And other communities have enacted specific measures to protect habitat and ecosystems. Timber, soil and viewsapes are often associated resource components forming critical parts of the overall property values. Of course the desire for improved views can have negative impact on ecosystems. The natural setting of Belcarra makes up a major component of the greater neighborhood values, and in turn the real estate values. As mentioned earlier, there will be riparian rights, ground water protection and guidance on endangered species. Timber and soil are essential parts of habitat values.

## 8. Guiding Principles

The community is committed to ethical business conduct by public officers and elected officials. It is important that the objectives are well defined in advance of any such transactions. The annual reporting process, official community plan, minutes of meetings and public attendance all serve to ensure the public is fully informed of such activity.

In the road management context, Belcarra has chosen transparent review measures. Below are several key stages where you, as a member of the public, can help council in making decisions:

- Preparing a catalog of possible surplus road assets
- An opportunity for public input on community long-term values for these assets that might extend to other road uses, utility plans, trail networks, renting or leasing options, green space, environmental values, immediately adjacent-owner interests, and neighborhood interests. Council will benefit from public input in determining which actions are appropriate:
  - Sale
  - Lease
  - License
  - Permit
  - Status quo
- A public opportunity to refine the catalog
- A public discussion about the intended use of proceeds
- Pricing must be based on market value
- There cannot be unlawful assistance provided to businesses (*Community Charter* section 25)
- Published notice and public input in advance of any disposition (may not be legislated in every instance)

Notwithstanding the need for confidentiality, dispositions are usually disclosed (*Community Charter* section 26.)

There are exceptions to full public disclosure. These are intended to ensure affected parties are protected from public interference or unintended outcomes as set out in the *Freedom of Information and Protection of Privacy Act*. They include:



- Integrity of negotiations
- Ensuring fair competition
- Timing of information releases

There are distinctions in the public notice procedures for disposal under the *Community Charter* (sections 26.2 and 26.3). These refer to land which is available for public disposition and land which is not.

Furthermore, there are a number of tools to allow the conduct of business in a confidential and business-like manner:

- Closed meetings pursuant to *Community Charter* provisions
- Use of solicitors
- Sealed envelope bidding

## 9. Conclusion

The information presented here is in response to a 13 February, 2012 community petition to examine revenue generation opportunities of surplus road ends. This discussion document does not advocate disposing or retaining roads. There are a number of revenue generating options where there is a compelling reason for council to take a specific position or make a land use decision. The most significant of these is the *Community Charter* restriction of options when waterfront land is being considered. Waterfront land disposal cannot be a revenue mechanism for the community treasury.

This project emphasizes that there are often competing and conflicting interests and many future-based requirements for the network of developed and undeveloped roads in Belcarra. Disposal of an undeveloped road may seem lucrative but as this paper shows there are significant risks and legal complications to be addressed before any road is disposed. And it is clearly set out in legislation that waterfront lands must be used to enhance community waterfront benefits.

Roads already generate revenue through utility franchises. Unused roads may be made available for private use through tenure agreements of various kinds returning further rents, fees and taxes to the Municipality. While some residents may have site specific and personal road use needs it is the collective need of the greater community that must be first be weighed before portions of the road system can be allocated. This task of weighing needs and options for future road use is a collective process involving residents, elected officials, staff, and may include outside agencies.

As Belcarra moves into an era of managing road use the demands on staff time and specialized skills will increase. The complexity of values requires that no site be pre-judged. Decisions require detailed examination and in some cases require detailed consultation. Belcarra Council has assembled a starting place for bringing together the locations, the values and potential options. Questions will always be welcome and new information will always come forward. In the end decisions will need to be made on a case-by-case basis. Notices will be published, and results will be presented in an accountable fashion.

## 10. Appendices

### Appendix 10.1 Photographs and Maps of Individual Roads

This section presents thirty-one locations evaluated in this study including most of the twenty-four locations identified in an original letter to the Village.

FrontCounterBC<sup>®</sup> is the data source for the airphoto views of the thirty-one site maps. Due to terrain and airphoto distortion improvements may or may not be correctly depicted within roads or property boundaries. Only a site survey can do that.

Features in our customized view for the Belcarra road project are:

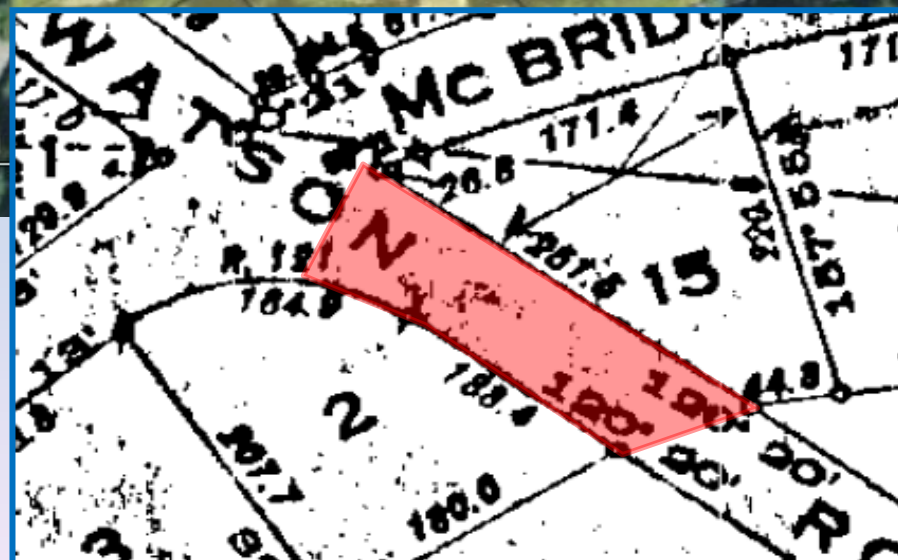
- Proportional private and government interests
- Proximity of private land to various roads
- Roads proximate to shoreland
- Other surveyed or documented roads



The FrontCounterBC Discovery Tool is designed to help clients view an area of land within the Province of British Columbia. It provides basic information on how the land is currently being used and how it is used relative to adjacent areas.

This data is available to the public at the website link: <http://www.frontcounterbc.gov.bc.ca/mapping/index.html>

# Site 1: Watson Road South-East of Bedwell Bay Rd



## Current Public Use:

- Defined watercourse

## Future/Potential Public Use:

- Drainage and groundwater management
- Trail network

## Historical and Current Private Use:

- Privacy/Security

## Defined Community Value:

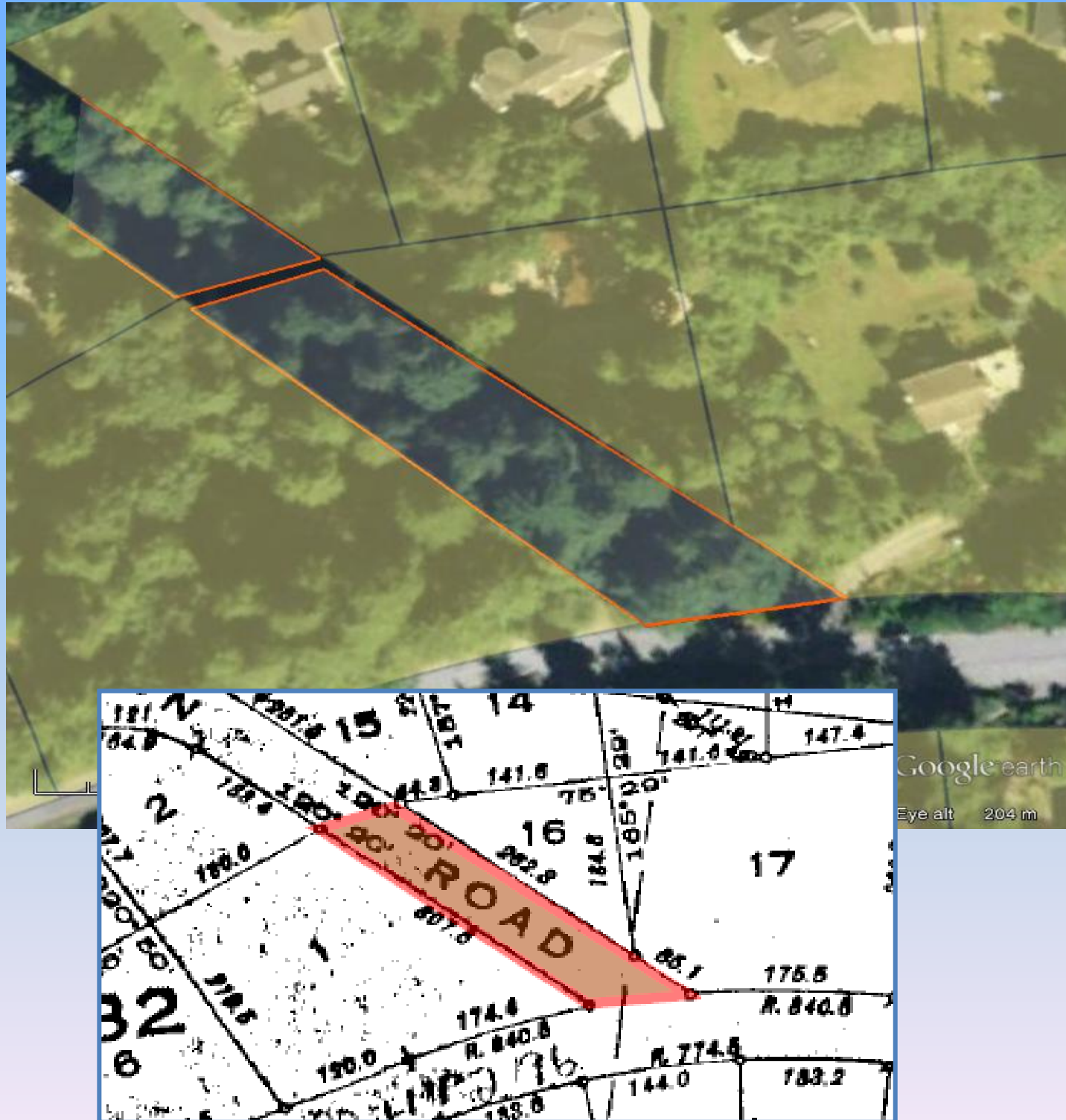
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities



# Site 2: Watson Road North-West of Main Ave



## Current Public Use:

- Public utilities

## Future/Potential Public Use:

- Drainage and groundwater management
- Trail network

## Historical and Current Private Use:

- Driveway access
- Privacy/Security

## Defined Community Value:

- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities

# Site 3: Watson Road South-East of Marine Ave



## Current Public Use:

- Drainage and groundwater management
- Defined watercourse

## Future/Potential Public Use:

- Trail network

## Historical and Current Private Use:

- Driveway access
- Privacy/Security

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities
- CC 41.1 Shoreland Revenue Limitation TBD
- Stream Setback



# Site 4: Marine Avenue Waterfront North of Watson Rd Lots 1 to 5



## Current Public Use:

- Defined watercourse

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management
- Retaining structure
- Trail network

## Historical and Current Private Use:

- Private occupation
- Private water access

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- Stream Setback
- CC 40.4 & 41.4 Affected Utilities
- LTA 96 Confirm Natural Boundary
- CC 41.1 Shoreland Revenue Limitation

# Site 5: Marine Avenue Waterfront; West of Senkler Rd. Lots 6 to 11



## Current Public Use:

- Drainage and groundwater management

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management
- Retaining structure
- Trail network
- Radio sightline, navigation and communication systems

## Historical and Current Private Use:

- Privacy/Security
- Private occupation
- Private water access

## Defined Community Value:

- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities
- LTA 96 Confirm Natural Boundary
- CC 41.1 Shoreland Revenue Limitation



[illegible]

- Public utilities
- Drainage and groundwater management
- Trail network

- Unknown

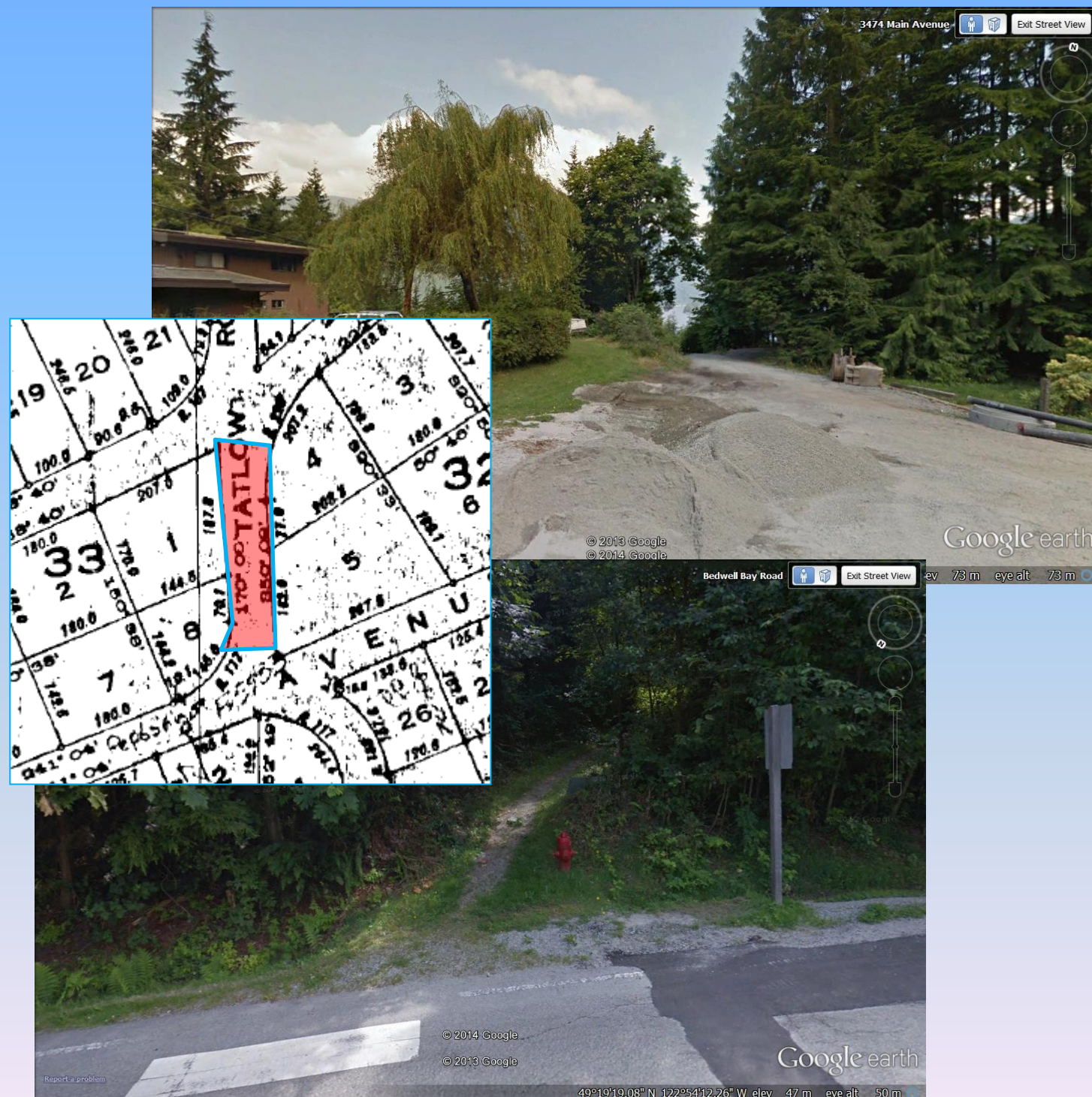
- Driveway access
- Privacy/Security
- Private occupation

- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

- CC 40.4 & 41.4 Affected Utilities



# Site 7: Tatlow Road between Main Ave & Bedwell Bay Road



## Current Public Use:

- Public utilities
- Drainage and groundwater management
- Trail network

## Future/Potential Public Use:

- Unknown

## Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation

## Defined Community Value:

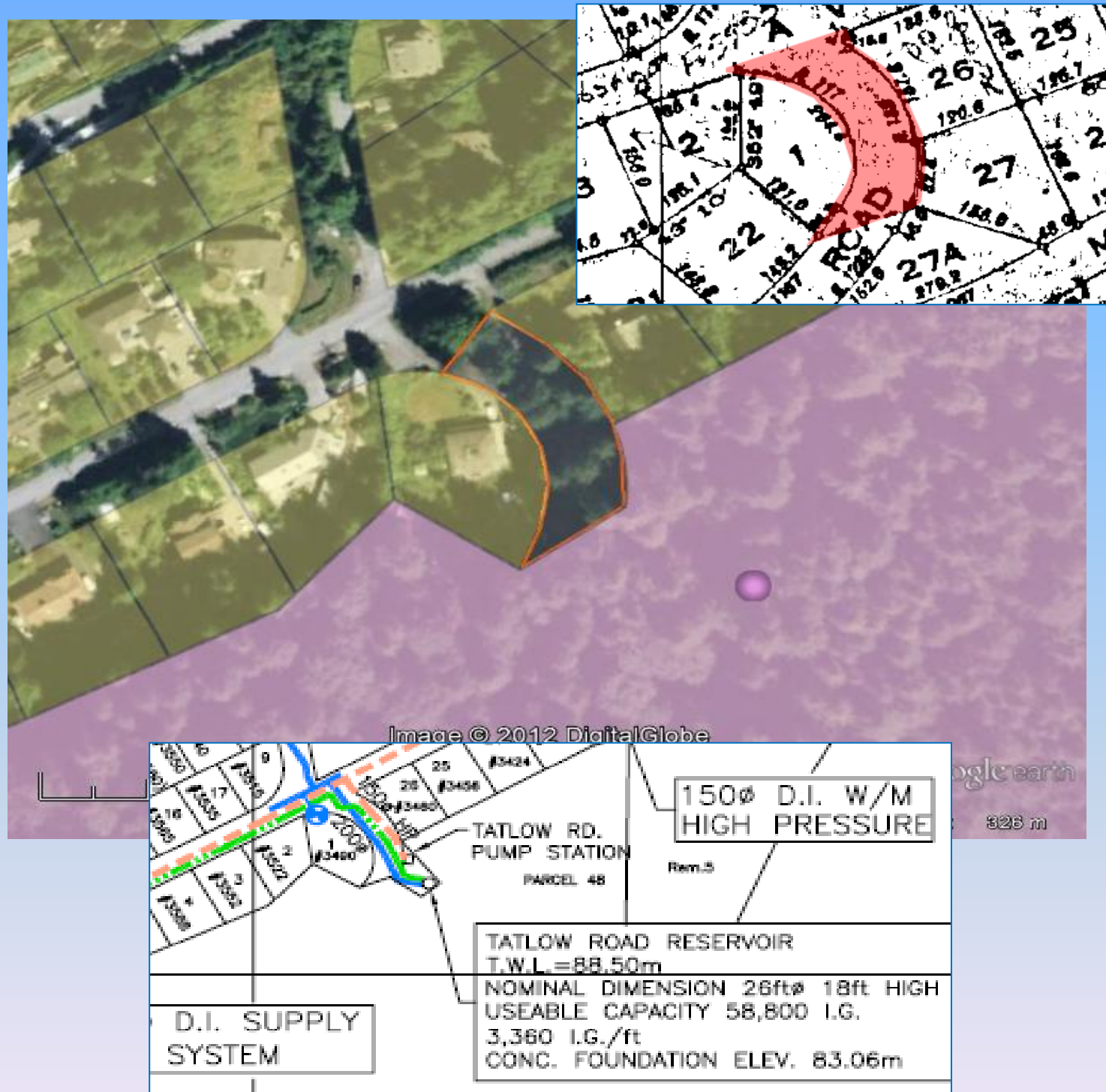
- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities



# Site 8: Tatlow Road South of Main Avenue



## Current Public Use:

- Tatlow Pump Station and reservoir
- Public utilities
- Drainage and groundwater management
- Defined watercourse
- Service road
- Radio sightline, navigation and communication systems
- Access to Crown lands, parks or private lands beyond

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management
- Trail network
- Radio sightline, navigation and communication systems

## Historical and Current Private Use:

- Driveway access

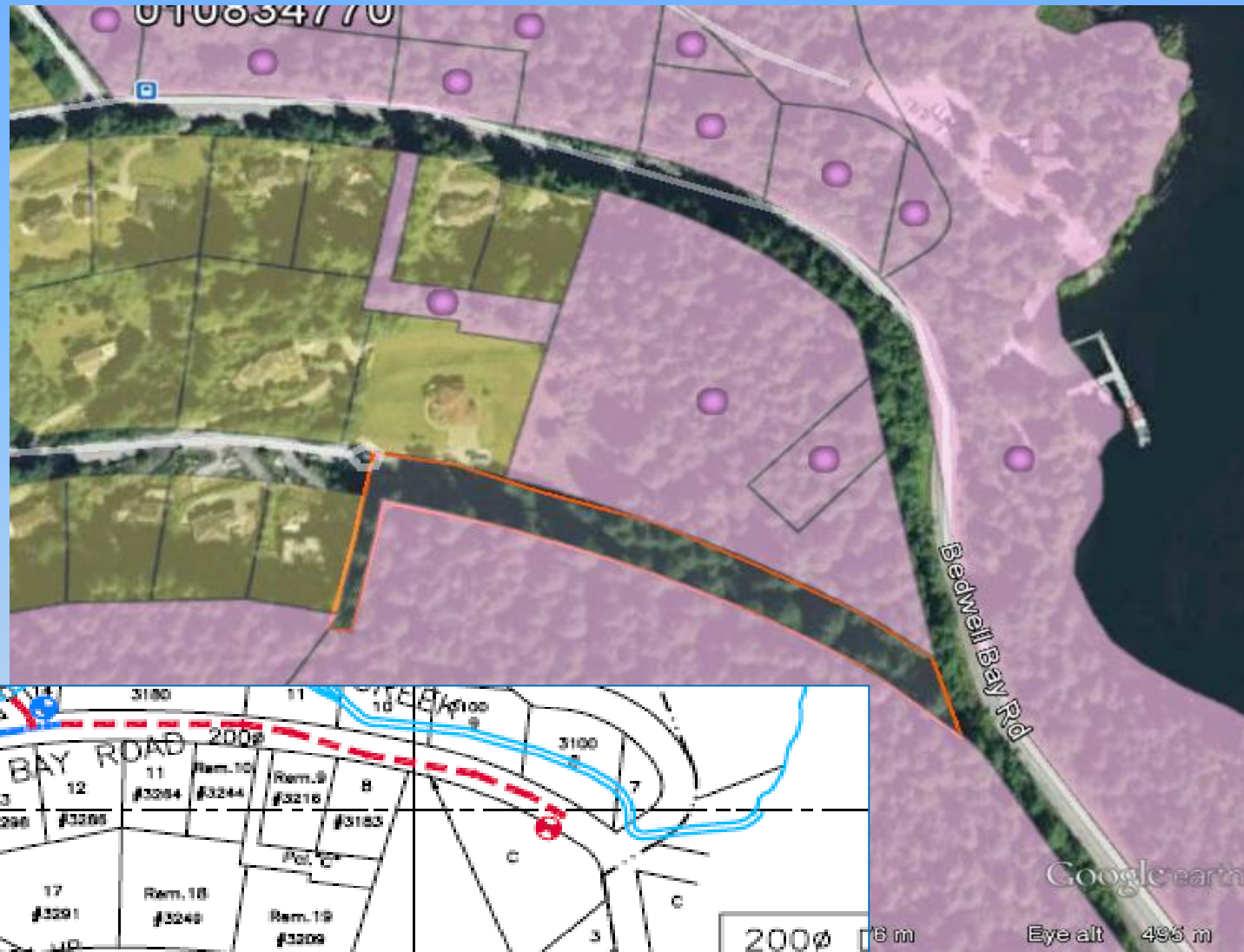
## Defined Community Value:

- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities

# Site 9: Main Avenue East of Cul de sac



## Current Public Use:

- Trail network
- Access to Crown lands, parks or private lands beyond

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management
- Trail network
- Access to Crown lands, parks or private lands beyond

## Historical and Current Private Use:

- Driveway access
- Private utility
- Private occupation

## Defined Community Value:

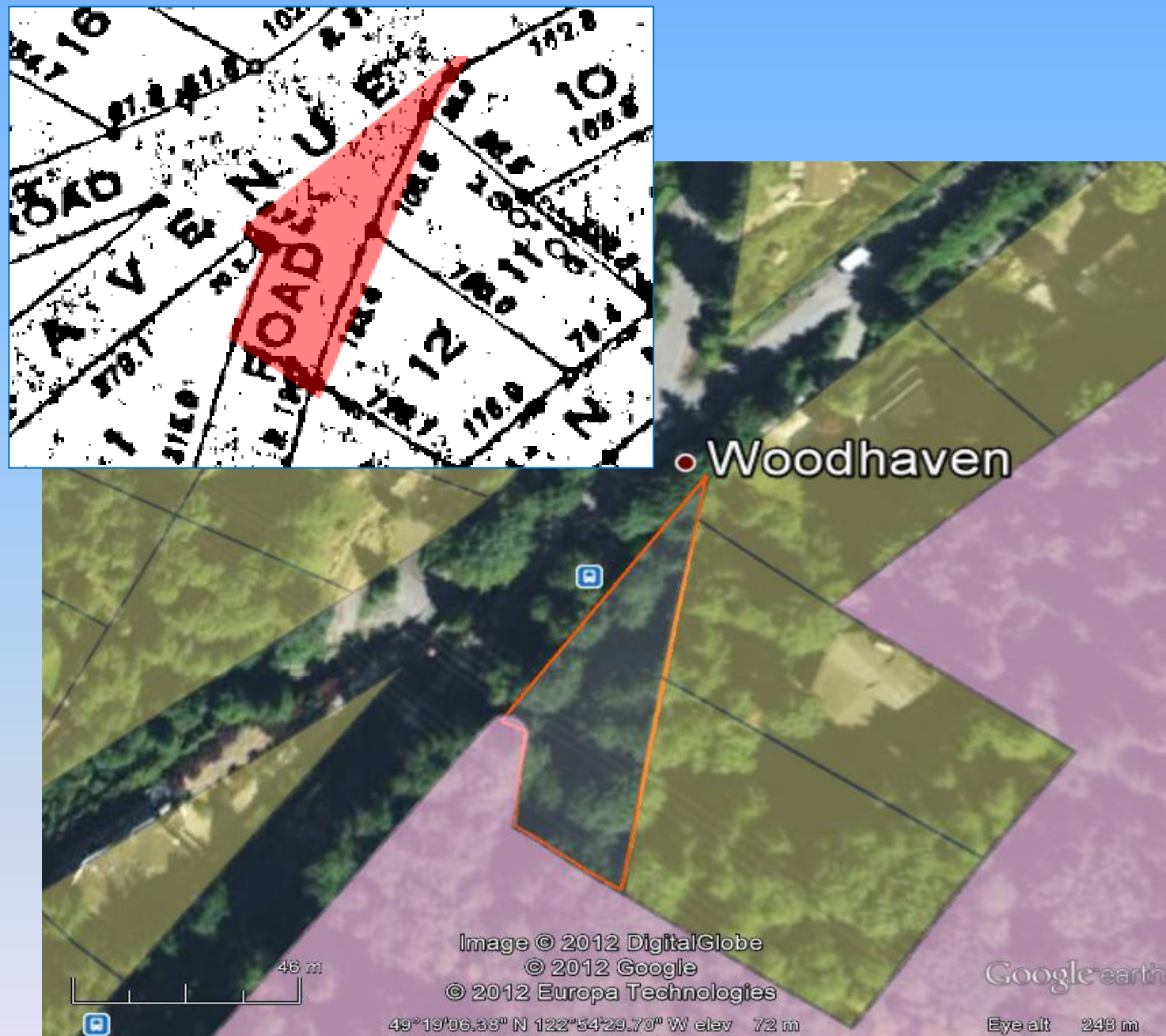
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 35.2.d Determine status of Road in park
- Fraser Health notice re septic system;
- CC 40.4 & 41.4 Affected Utilities



# Site 10: Kelly Road South of Bedwell Bay Rd



## Current Public Use:

- Public utilities
- Drainage and groundwater management
- Hydro transmission easement

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management
- Trail network
- Access to Crown lands, parks or private lands beyond

## Historical and Current Private Use:

- Driveway access
- Private occupation

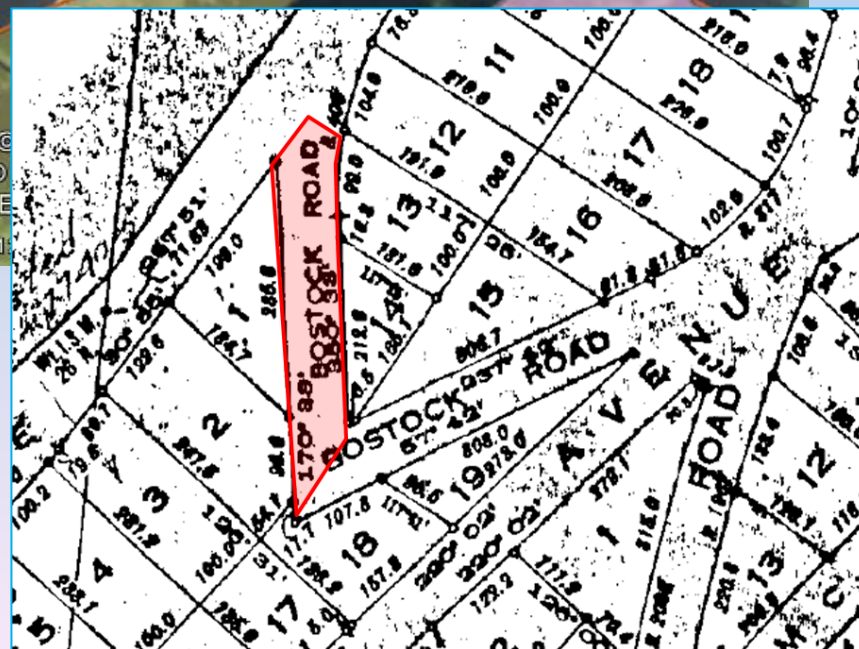
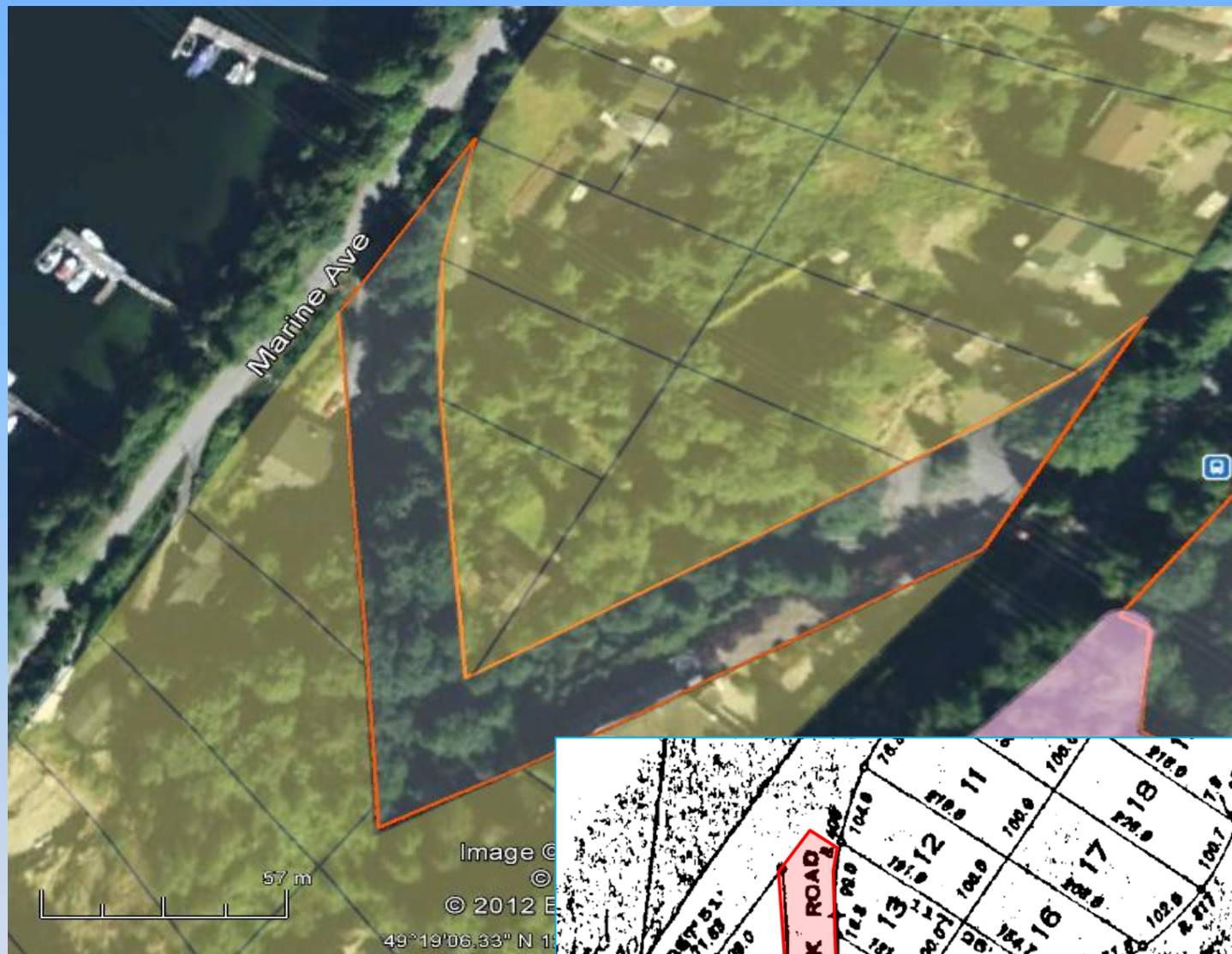
## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities

# Site 11: Bostock Road South of Marine Ave



## Current Public Use:

- Public utilities
- Drainage and groundwater management
- Defined watercourse
- Hydro transmission easement

## Future/Potential Public Use:

- Drainage and groundwater management
- Trail network

## Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

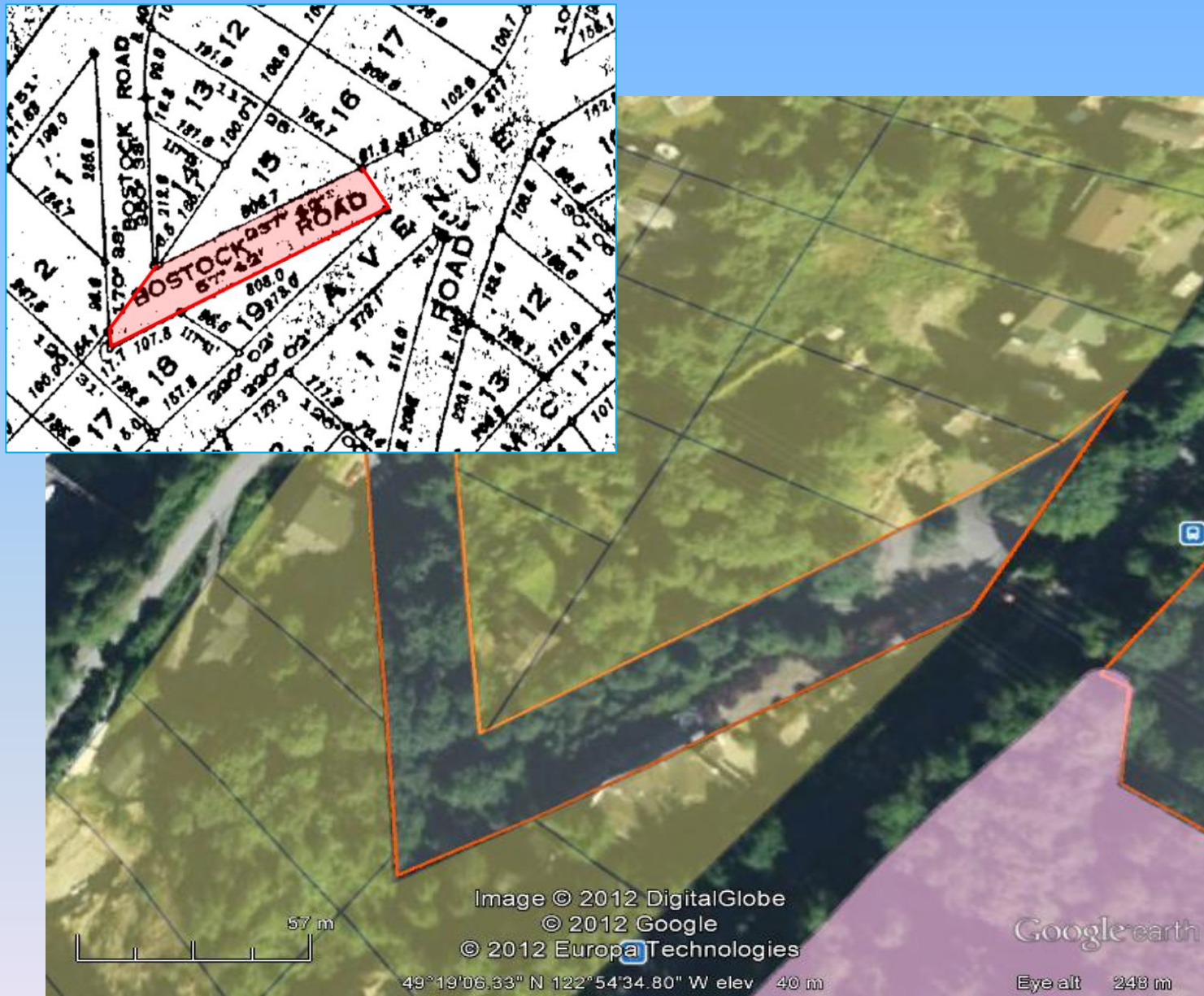
## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities



# Site 12: Bostock Road

## South-west of Bedwell Bay Rd



### Current Public Use:

- Public utilities
- Drainage and groundwater management
- Defined watercourse
- Retaining structure
- Service road
- Hydro transmission easement

### Future/Potential Public Use:

- Local road
- Drainage and groundwater management
- Trail network

### Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation

### Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

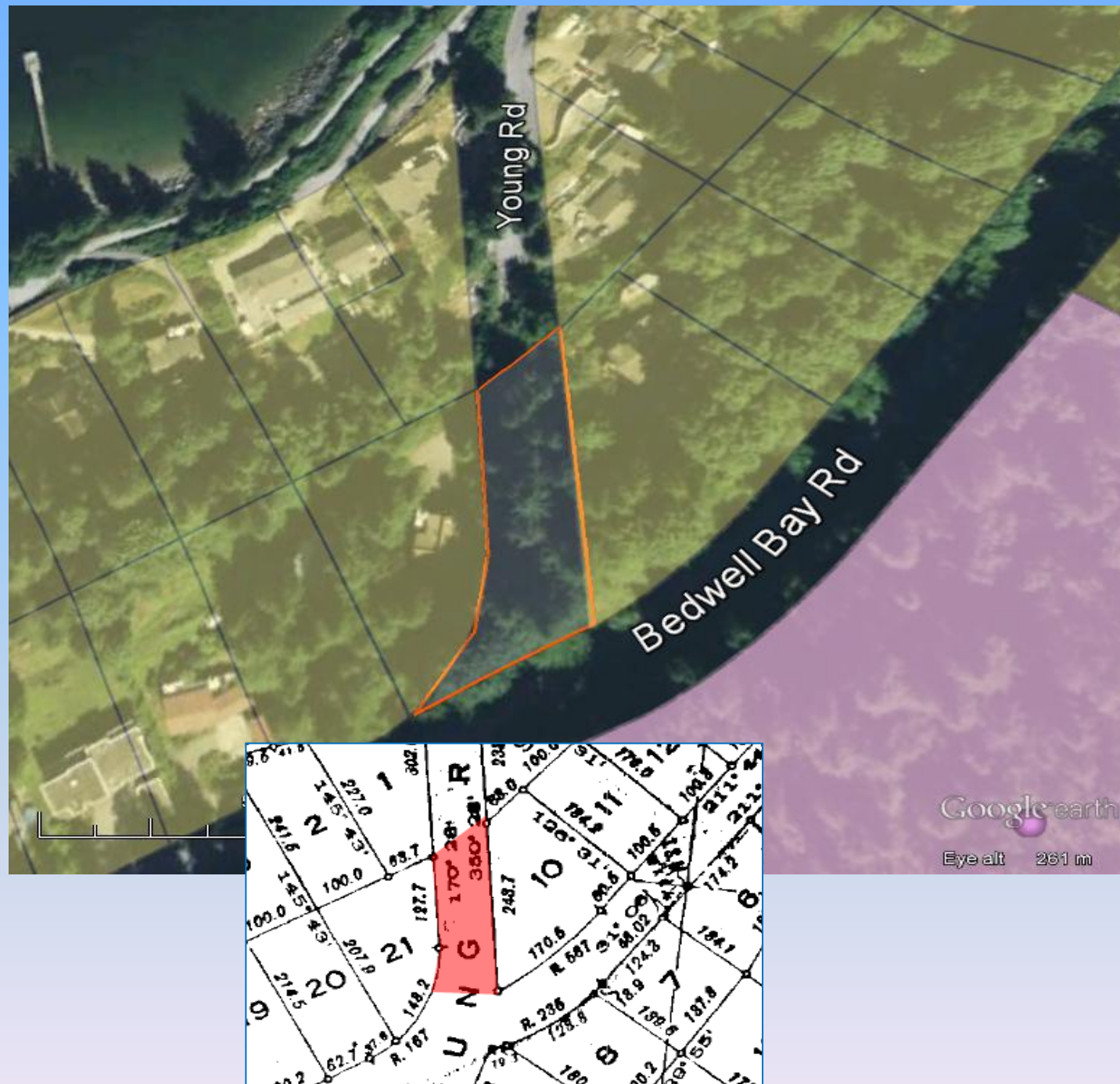
### Legislative, Regulatory, Legal

#### Considerations:

- CC 40.4 & 41.4 Affected Utilities



# Site 13: Young Road North of Bedwell Bay Rd



## Current Public Use:

- Public utilities
- Drainage and groundwater management

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management
- Retaining structure
- Trail network

## Historical and Current Private Use:

- Driveway access
- Private utility
- Privacy/Security
- Private occupation

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities



# Site 14: Midden Road West of Belcarra Bay Rd



## Current Public Use:

- Water access
- Michael Rosen Receiving Building
- Public utilities
- Drainage and groundwater management
- Service road
- Radio sightline, navigation and communication systems
- Midden or heritage and cultural resources

## Future/Potential Public Use:

- Trail network

## Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation

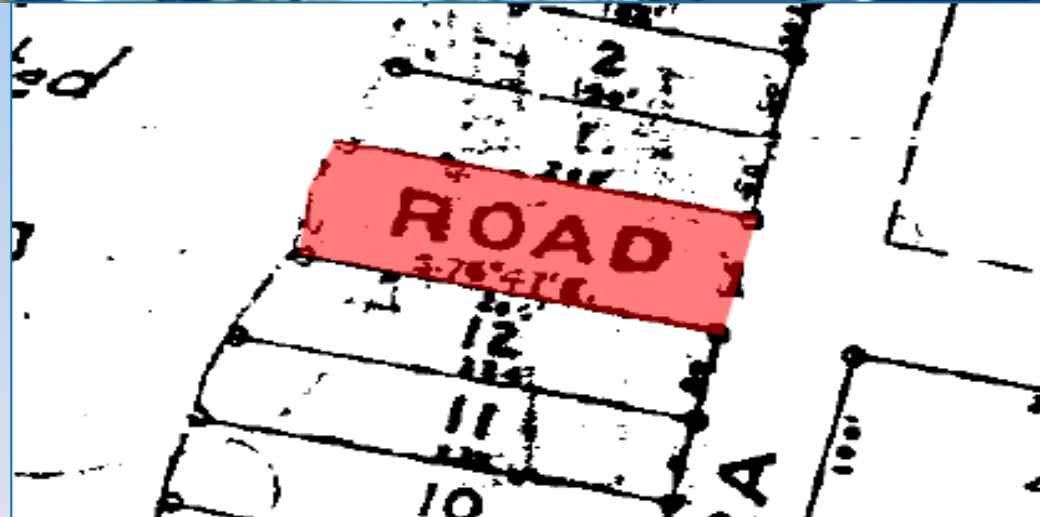
## Defined Community Value:

- Public access to water
- Viewscape
- Trees and community green space

## Legislative, Regulatory, Legal Considerations:

- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary
- CC 40.4 & 41.4 Affected Utilities

# Site 15: Bedwell Bay Road West of Belcarra Bay Rd



## Current Public Use:

- Water access
- Drainage and groundwater management
- Defined watercourse

## Future/Potential Public Use:

- Trail network

## Historical and Current Private Use:

- Driveway access
- Privacy/Security

## Defined Community Value:

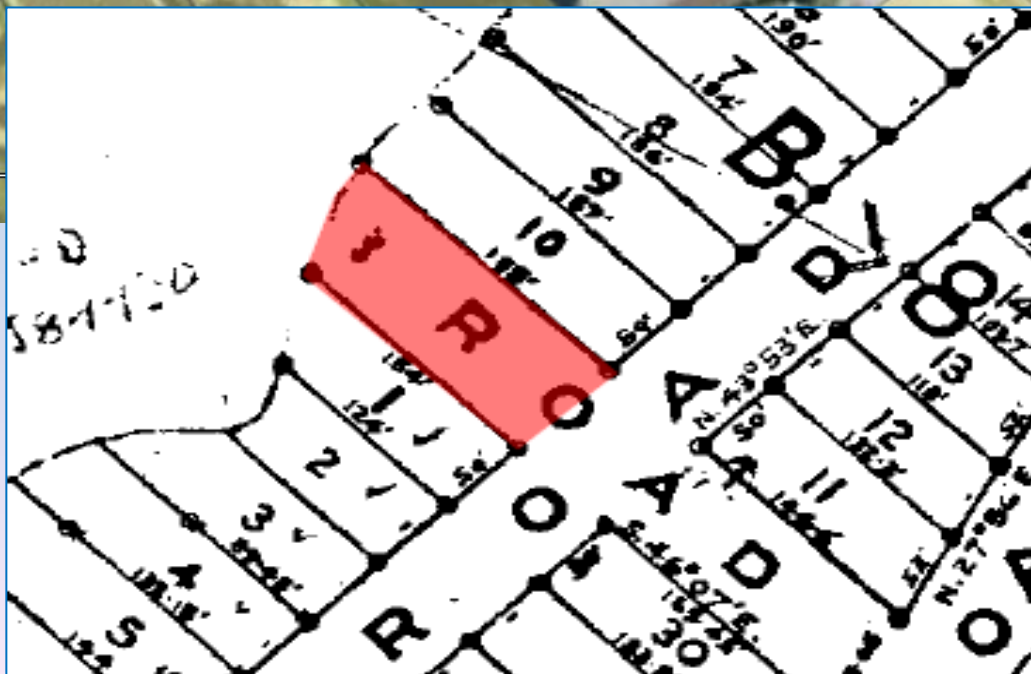
- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary
- CC 40.4 & 41.4 Affected Utilities



# Site 16: Salish Road West of Robson Rd



## Current Public Use:

- Water access
- Trail network
- Memorial bench

## Future/Potential Public Use:

- Drainage and groundwater management

## Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation

## Defined Community Value:

- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary

# Site 17: Whiskey Cove Lane West of Cul de sac

## Current Public Use:

- None

## Future/Potential Public Use:

- Trail network

## Historical and Current Private Use:

- Privacy/Security
- Private occupation

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

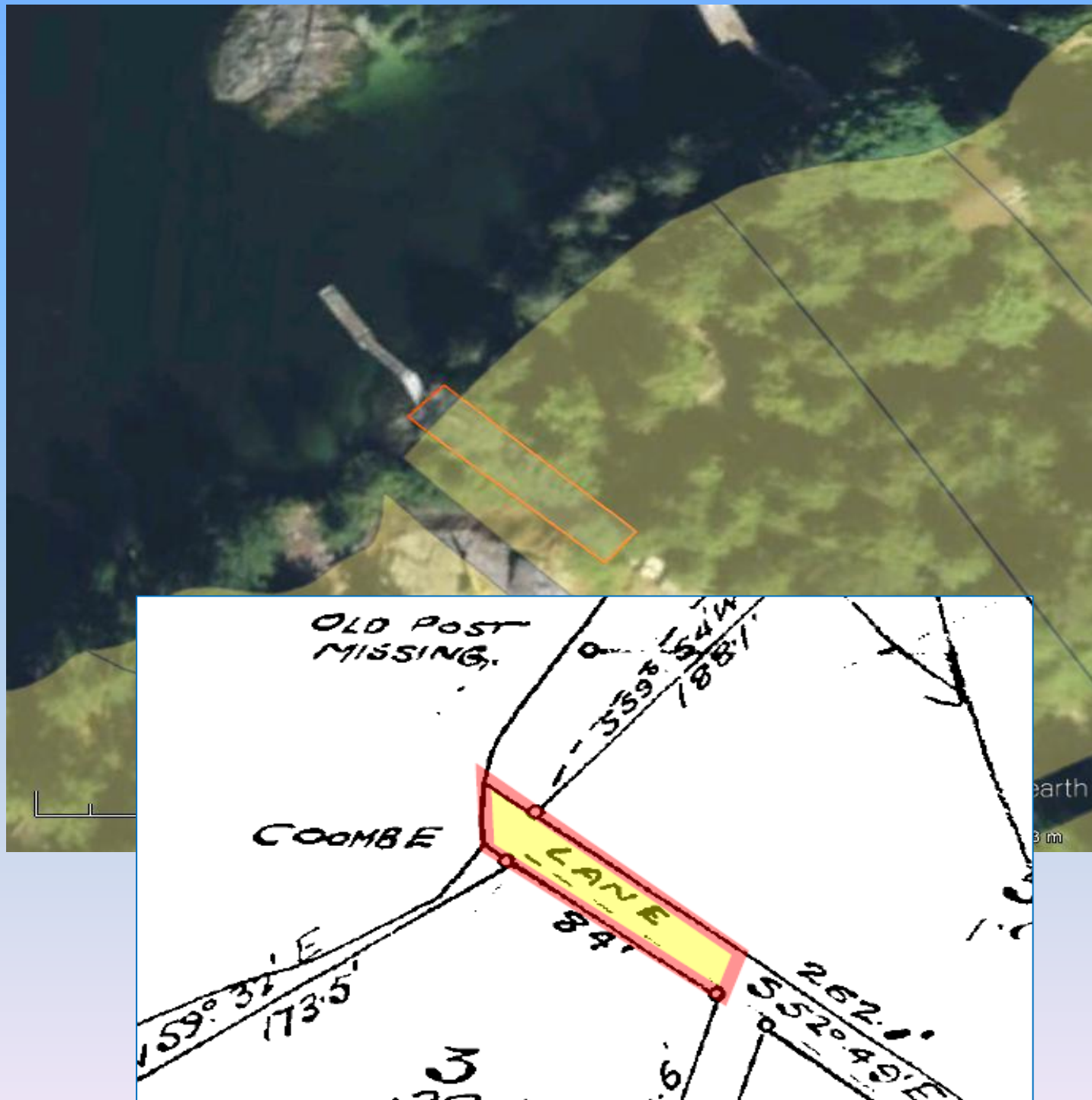
- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary





# Site 18 – Coombe Lane

## North-west of roadway



### Current Public Use:

- Water access
- Public utilities
- Drainage and groundwater management
- Defined watercourse
- Trail network

### Future/Potential Public Use:

- Public utilities
- Drainage and groundwater management

### Historical and Current Private Use:

- Privacy/Security
- Private occupation

### Defined Community Value:

- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

### Legislative, Regulatory, Legal Considerations:

- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary
- CC 40.4 & 41.4 Affected Utilities

# Site 19: Turtlehead Triangle at Junction with Belcarra Bay Rd



## Current Public Use:

- Public utilities
- Drainage and groundwater management
- Defined watercourse
- Service road
- Trail network

## Future/Potential Public Use:

- Unknown

## Historical and Current Private Use:

- Driveway access
- Privacy/Security

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities
- Determine status of road in Park CC 35.2.d;
- Review Gazette notice N114163;



# Site 20: Taylor Road South of Bedwell Bay Rd



## Current Public Use:

- Drainage and groundwater management
- Trail network

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management
- Retaining structure
- Adjoins municipal-owned lot 1, to west, with bus shelter and mailboxes

## Historical and Current Private Use:

- Driveway access
- Private utility
- Privacy/Security
- Private occupation

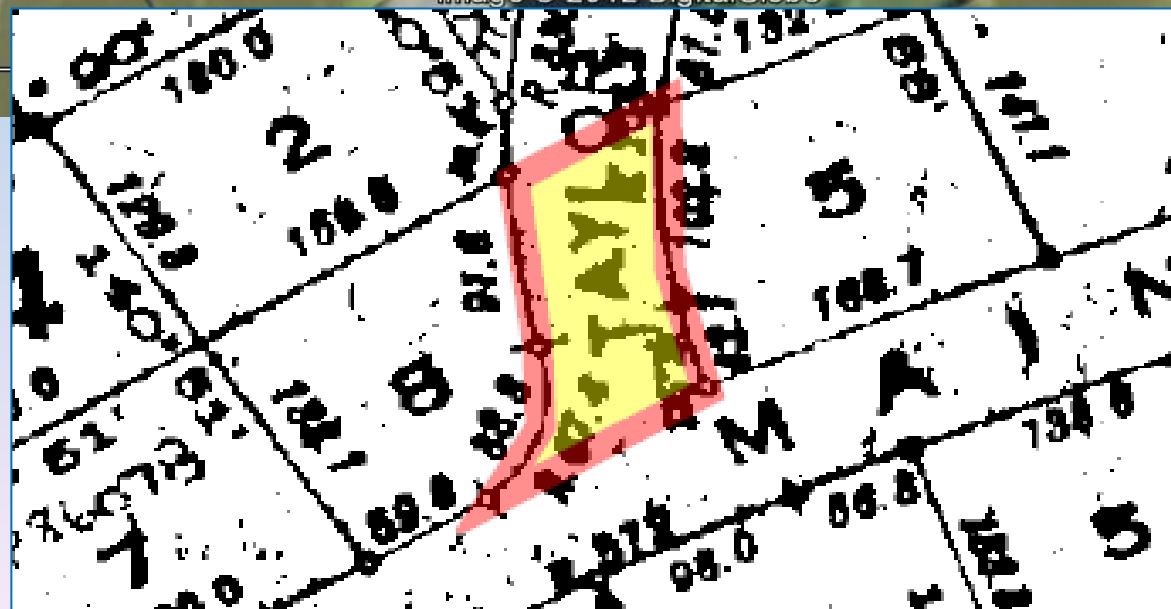
## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities

# Site 21: Taylor Road North of Main Ave



## Current Public Use:

- Drainage and groundwater management
- Trail network

## Future/Potential Public Use:

- Public utilities
- Local road
- Drainage and groundwater management

## Historical and Current Private Use:

- Privacy/Security
- Private occupation

## Defined Community Value:

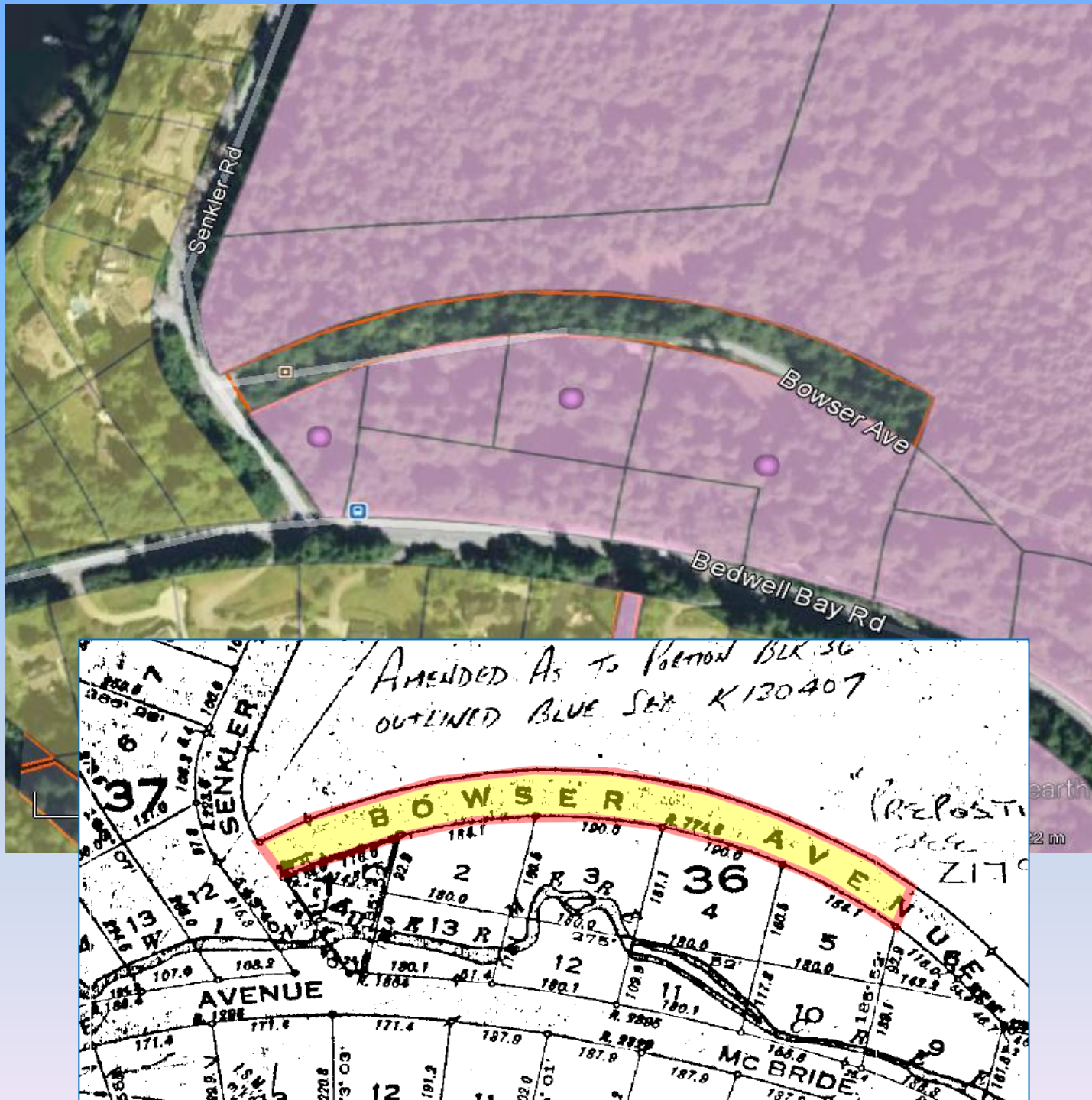
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 40.4 & 41.4 Affected Utilities



# Site 22: Bowser Avenue East of Senkler Rd



## Current Public Use:

- Drainage and groundwater management
- Access road (i.e. Sasamat Camp)
- Emergency access (i.e. Sasamat alternate route)
- Trail network
- Within Regional Park Boundary
- Access to Crown lands, parks or private lands beyond

## Future/Potential Public Use:

- Public utilities

## Historical and Current Private Use:

- Driveway access
- Private utility
- Privacy/Security
- Private occupation

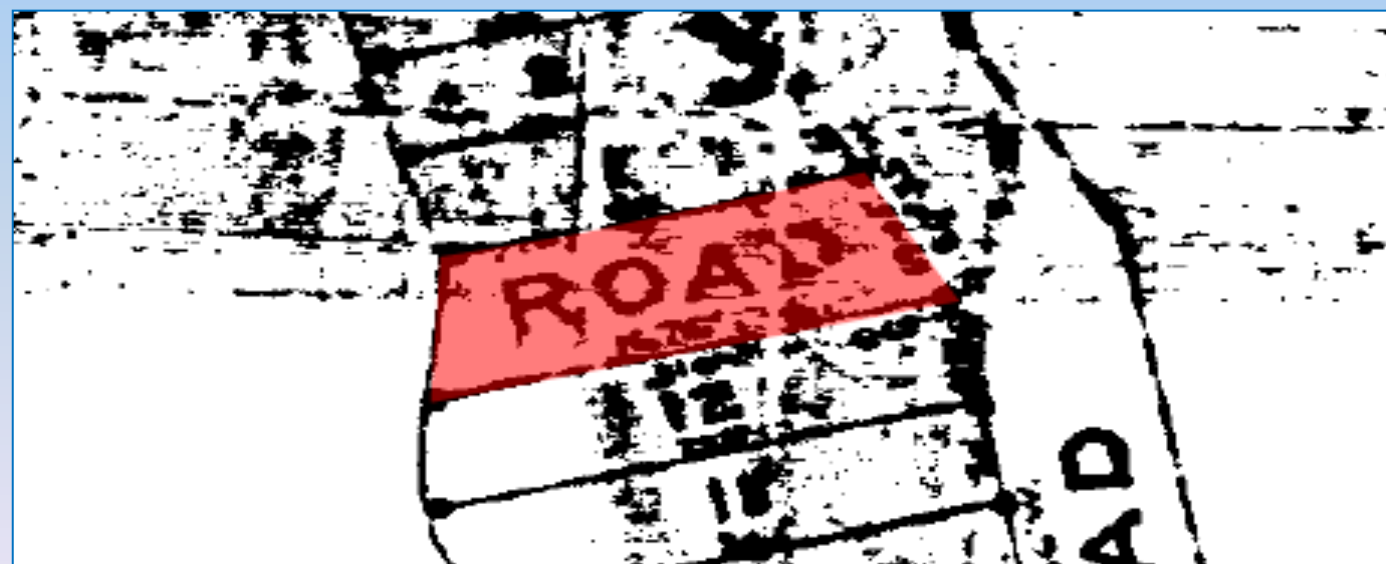
## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- Determine status of Road in park per CC 35.2.d
- CC 40.4 & 41.4 Affected Utilities

# Site 23: 4700 Block West of Belcarra Bay Road



## Current Public Use:

- Water access
- Drainage and groundwater management
- Retaining structure
- Trail network
- Radio sightline, navigation and communication systems

## Future/Potential Public Use:

- Drainage and groundwater management
- Retaining structure
- Trail network

## Historical and Current Private Use:

- Driveway access
- Private utility
- Privacy/Security
- Private occupation

## Defined Community Value:

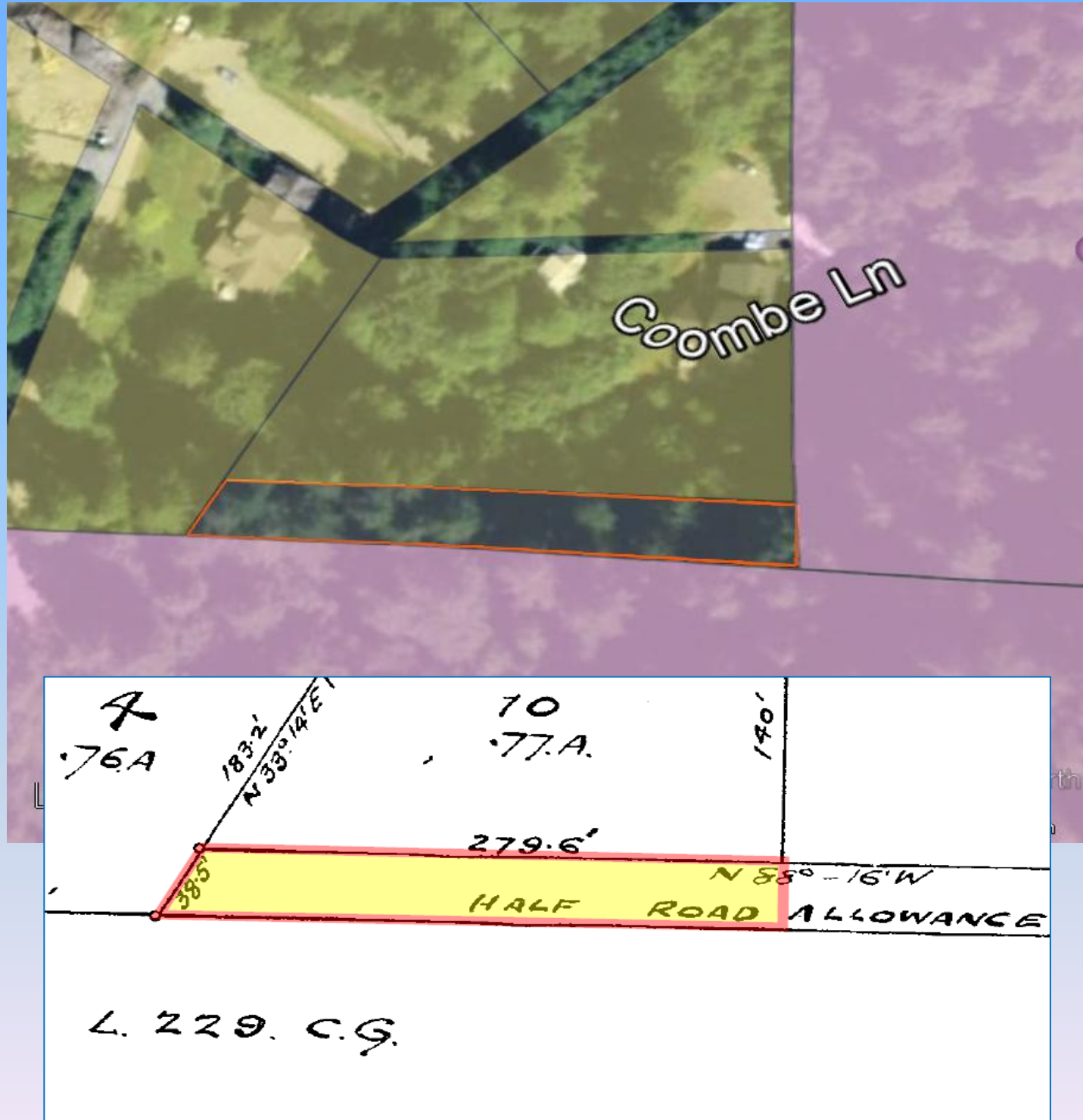
- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary
- CC 40.4 & 41.4 Affected Utilities



# Site 24: Belcarra Park East of Whiskey Cove – (Whiskey Cove Lane)



## Current Public Use:

- Landlocked, adjacent to Regional Park

## Future/Potential Public Use:

- None

## Historical and Current Private Use:

- None

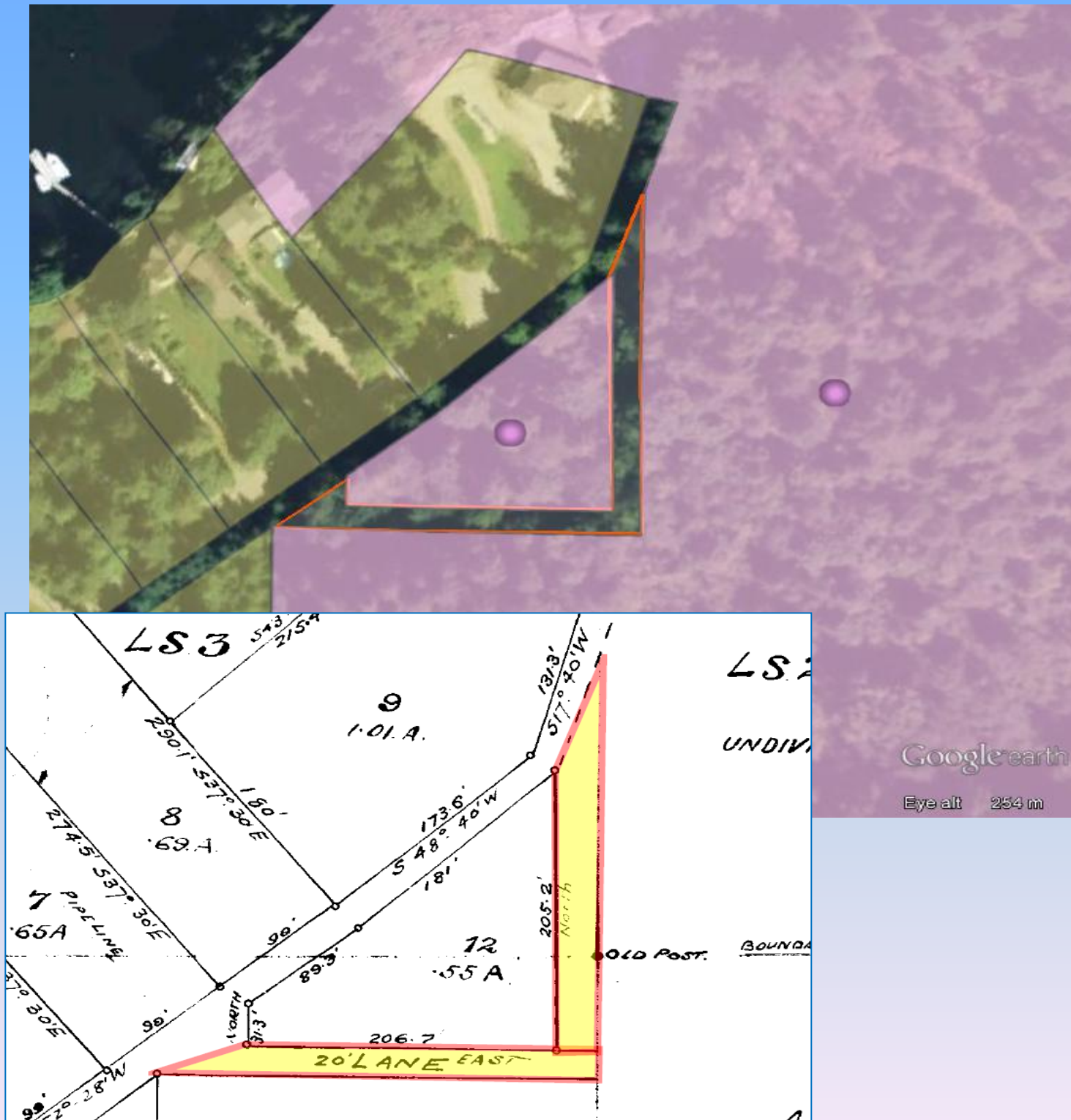
## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- Review status of Road 'adjacent' to park per CC 35.2.d

# Site 25: Belcarra Park East of Coombe Lane



## Current Public Use:

- Drainage and groundwater management
- Within Regional Park Boundary

## Future/Potential Public Use:

- Access to Crown lands, parks or private lands beyond

## Historical and Current Private Use:

- Private utility
- Private occupation
- Well

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

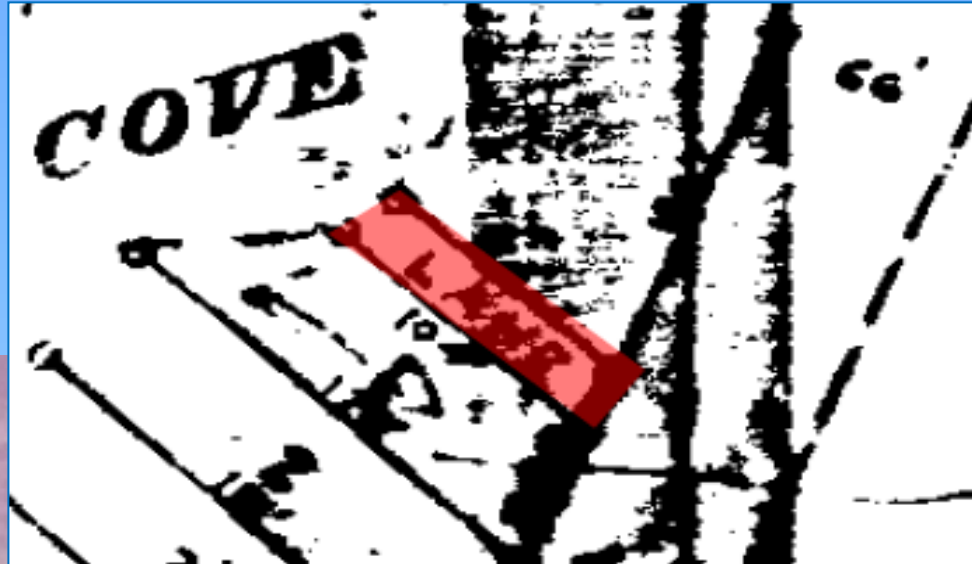
## Legislative, Regulatory, Legal Considerations:

- Review status of Road in park per CC 35.2.d
- CC 40.4 & 41.4 Affected Utilities



# Site 26:

## Lane at Whiskey Cove



### Current Public Use:

- None
- Adjoins Regional Park

### Future/Potential Public Use:

- Access to Crown lands, parks or private lands beyond

### Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation

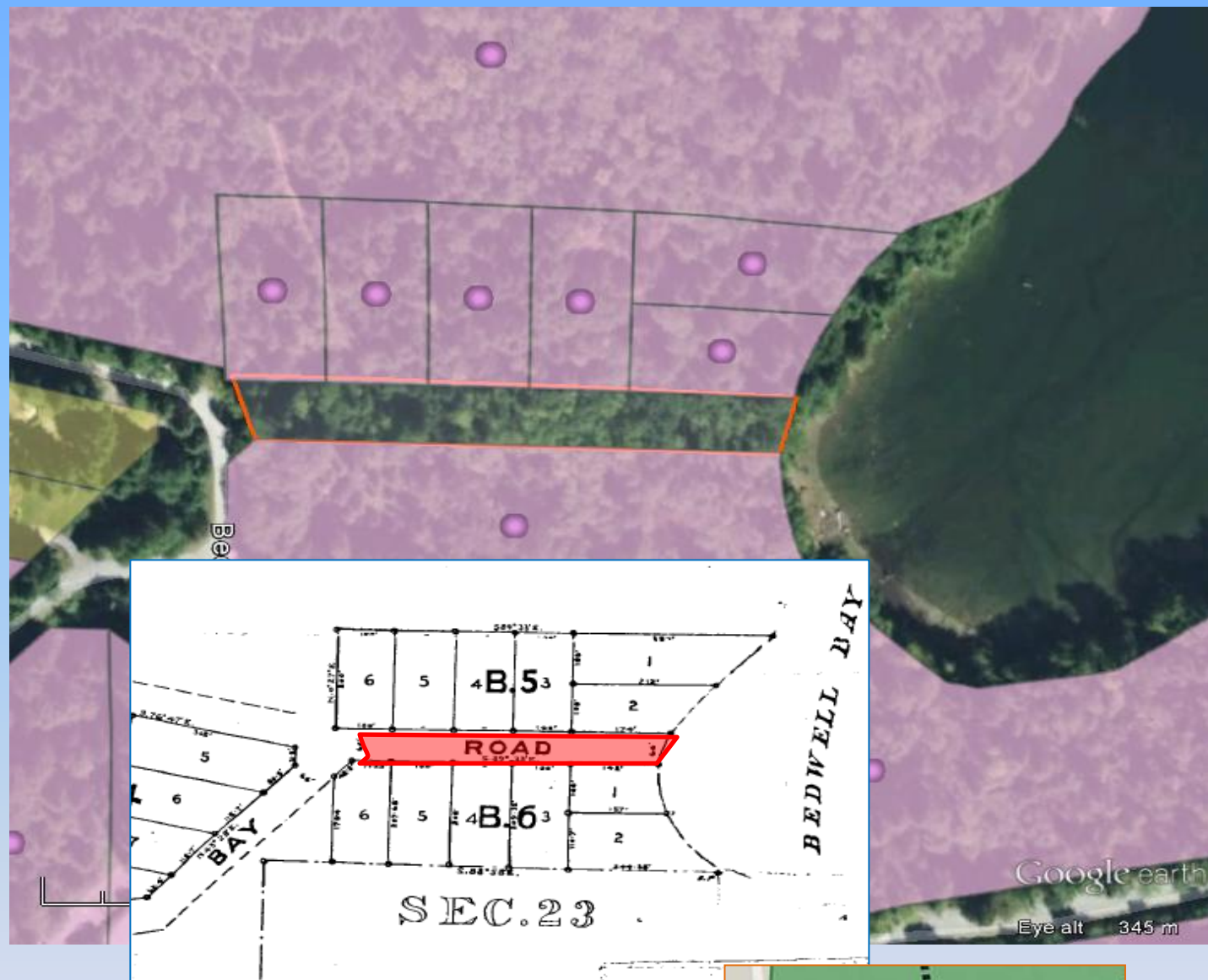
### Defined Community Value:

- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

### Legislative, Regulatory, Legal Considerations:

- Review status of Road 'adjacent ' to park per CC 35.2.d
- CC 41.1 Shoreland Revenue Limitation

# Site 27: Belcarra Park - East Extension off Bedwell Bay Road



## Current Public Use:

- Within Regional Park Boundary

## Future/Potential Public Use:

- Trail network
- Access to Crown lands, parks or private lands beyond

## Historical and Current Private Use:

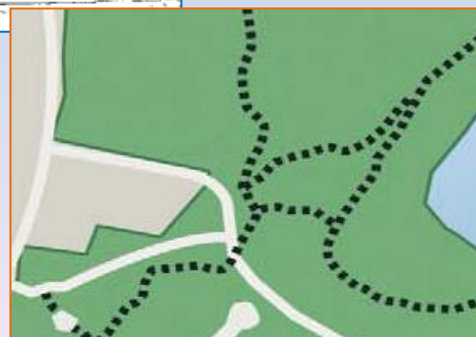
- None

## Defined Community Value:

- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- Determine status of Road in park per CC 35.2.d
- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary





# Site 28: Belcarra Park

## Eastward Extension of Midden Road



### Current Public Use:

- Within Regional Park Boundary

### Future/Potential Public Use:

- Trail network
- Access to Crown lands, parks or private lands beyond

### Historical and Current Private Use:

- None

### Defined Community Value:

- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

### Legislative, Regulatory, Legal Considerations:

- CC 35.2.d Determine status of Road in park
- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary

# Site 29: Road at 100 Block of Turtlehead



## Current Public Use:

- Drainage and groundwater management

## Future/Potential Public Use:

- Public utilities
- Drainage and groundwater management
- Trail network
- Radio sightline, navigation and communication systems

## Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation
- Private water access

## Defined Community Value:

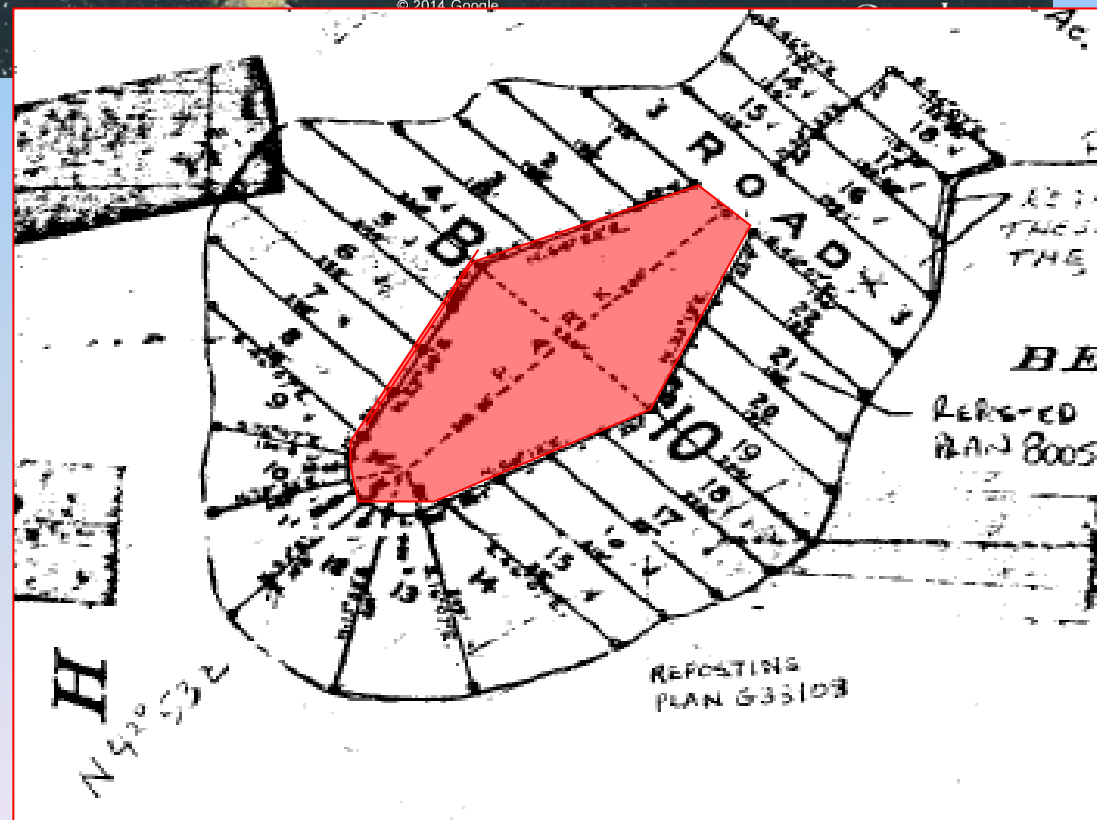
- Public access to water
- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary
- CC 40.4 & 41.4 Affected Utilities



# Site 30: Turtlehead Road Cul de Sac



## Current Public Use:

- Public utilities
- Drainage and groundwater management
- Retaining structure
- Designated Municipal park

## Future/Potential Public Use:

- Public utilities
- Drainage and groundwater management
- Retaining structure

## Historical and Current Private Use:

- Driveway access
- Privacy/Security
- Private occupation

## Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

## Legislative, Regulatory, Legal Considerations:

- CC 41.1 Shoreland Revenue Limitation
- LTA 96 Confirm Natural Boundary
- CC 40.4 & 41.4 Affected Utilities

# Site 31: Plan 74148

## South of Bedwell Bay Road (Regional Park Trail)



### Current Public Use:

- Trail network
- Within Regional Park Boundary
- Access to Crown lands, parks or private lands beyond

### Future/Potential Public Use:

- Drainage and groundwater management
- Trail network
- Access to Crown lands, parks or private lands beyond

### Historical and Current Private Use:

- None

### Defined Community Value:

- Viewscape
- Trees and community green space
- Habitat corridor

### Legislative, Regulatory, Legal Considerations:

- Clarify status as municipal park or road, LTA
- CC 41.1 Shoreland Revenue Limitation
- CC 40.4 & 41.4 Affected Utilities

## **Appendix 10.2      Catalog of Municipal Roads in Belcarra**

Detailed descriptions of the road location, current public use, future/potential public use, historical and current private use, defined community value (per OCP) and the legislative, regulatory and legal considerations.

## APPENDIX 10.2 - CATALOG OF REVIEWED MUNICIPAL ROADS IN BELCARRA

Site	Location	Current Public Use	Future/Potential Public Use	Historical and Current Private Uses*  *may be authorized by prior written approval	Defined Community Value  (from the Official Community Plan)	Legislative, Regulatory & Legal Considerations*  *Before closure any site would require the following plus the site-specific items listed on each line below: LTA Sec 86 Approving Officer Requirements Community Charter (CC) Sec 26 Property Disp. CC Sec 40 Road Closure Bylaw Zoning Bylaw 253
1	Watson Rd - SE of Bedwell Bay Rd	Defined watercourse	Drainage and groundwater management Trail network	Privacy/Security	Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
2	Watson Rd - NW of Main Ave	Public utilities	Drainage and groundwater management Trail network	Driveway access Privacy/Security	Trees and community greens pace Habitat corridor	CC 40.4 & 41.4 Affected Utilities
3	Watson Rd - SE of Marine Ave	Drainage and groundwater management Defined watercourse	Trail network	Driveway access Privacy/Security	Viewscape Trees and community green space Habitat corridor	Stream Setback CC 40.4 & 41.4 Affected Utilities CC 41.1 Shoreland Revenue Limitation TBD LTA 96 Confirm Natural Boundary
4	Marine Ave Waterfront - N of Watson Lots 1 to 5	Defined watercourse	Public utilities Local road Drainage and groundwater management Retaining structure Trail network	Private occupation Private water access	Viewscape Trees and community green space Habitat corridor	Stream Setback CC 40.4 & 41.4 Affected Utilities LTA 96 Confirm Natural Boundary CC 41.1 Shoreland Revenue Limitation
5	Marine Ave Waterfront - W of Senkler Road Lots 6-11	Drainage and groundwater management	Public utilities Local road Drainage and groundwater management Retaining structure Trail network Radio sightline, navigation and communication systems	Privacy/Security Private occupation Private water access	Public access to water Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities LTA 96 Confirm Natural Boundary CC 41.1 Shoreland Revenue Limitation
6	Tatlow Rd - Between Marine Ave and Bedwell Bay Rd	Public utilities Drainage and groundwater management Trail network	Unknown	Driveway access Privacy/Security Private occupation	Public access to water Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
7	Tatlow Rd - Between Main Ave and Bedwell Bay Rd	Public utilities Drainage and groundwater management Trail network	Unknown	Driveway access Privacy/Security Private occupation	Public access to water Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities

## APPENDIX 10.2 - CATALOG OF REVIEWED MUNICIPAL ROADS IN BELCARRA

Site	Location	Current Public Use	Future/Potential Public Use	Historical and Current Private Uses*  *may be authorized by prior written approval	Defined Community Value  (from the Official Community Plan)	Legislative, Regulatory & Legal Considerations*  *Before closure any site would require the following plus the site-specific items listed on each line below: LTA Sec 86 Approving Officer Requirements Community Charter (CC) Sec 26 Property Disp. CC Sec 40 Road Closure Bylaw Zoning Bylaw 253
8	Tatlow Rd - S of Main Ave	Tatlow Pump Station and Reservoir Public utilities Drainage and groundwater management Defined watercourse Service road Radio sightline, navigation and communication systems Access to Crown lands, parks or private lands beyond	Public utilities Local road Drainage and groundwater management Retaining structure Trail network Radio sightline, navigation and communication systems	Driveway access	Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
9	Main Ave - E of cul de sac	Trail network Access to Crown lands, parks or private lands beyond	Public utilities Local road Drainage and groundwater management Trail network Access to Crown lands, parks or private lands beyond	Driveway access Private utility Private occupation	Trees and community green space Habitat corridor	CC 35.2.d Determine status of Road in park Fraser Health notice re septic system; CC 40.4 & 41.4 Affected Utilities
10	Kelly Rd - S of Bedwell Bay Rd	Public utilities Drainage and groundwater management Hydro transmission easement	Public utilities Local road Drainage and groundwater management Trail network Access to Crown lands, parks or private lands beyond	Driveway access Private occupation	Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
11	Bostock Rd - S of Marine Ave	Public utilities Drainage and groundwater management Defined watercourse Hydro transmission easement	Drainage and groundwater management Trail network	Driveway access Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
12	Bostock Rd - SW of Bedwell Bay Rd	Public utilities Drainage and groundwater management Defined watercourse Retaining structure Service road Hydro transmission easement	Local road Drainage and groundwater management Trail network	Driveway access Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities



## APPENDIX 10.2 - CATALOG OF REVIEWED MUNICIPAL ROADS IN BELCARRA

Site	Location	Current Public Use	Future/Potential Public Use	Historical and Current Private Uses*  *may be authorized by prior written approval	Defined Community Value  (from the Official Community Plan)	Legislative, Regulatory & Legal Considerations*  *Before closure any site would require the following plus the site-specific items listed on each line below: LTA Sec 86 Approving Officer Requirements Community Charter (CC) Sec 26 Property Disp. CC Sec 40 Road Closure Bylaw Zoning Bylaw 253
13	Young Rd - N of Bedwell Bay Rd	Public utilities Drainage and groundwater management	Public utilities Local road Drainage and groundwater management Retaining structure Trail network	Driveway access Private utility Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
14	Midden Rd - W of Belcarra Bay Road	Water access Michael Rosen Receiving Building Public utilities Drainage and groundwater management Service road Radio sightline, navigation and communication systems Midden or heritage and cultural resources	Trail network	Driveway access Privacy/Security Private occupation	Public access to water Viewscape Trees and community green space	CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary CC 40.4 & 41.4 Affected Utilities
15	Bedwell Bay Rd - W of Belcarra Bay Road	Water access Drainage and groundwater management Defined watercourse	Trail network Public utilities Drainage Retaining structure Radio sightline	Driveway access Privacy/Security	Public access to water Viewscape Trees and community green space Habitat corridor	CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary CC 40.4 & 41.4 Affected Utilities
16	Salish Rd - W of Robson Rd	Water access Trail network Memorial bench	Drainage and groundwater management	Driveway access Privacy/Security Private occupation	Public access to water Viewscape Trees and community green space Habitat corridor	CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary
17	Whiskey Cove Lane - West of Cul de sac	None	Trail network	Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary
18	Coombe Lane - NW of roadway	Water access Public utilities Drainage and groundwater management Defined watercourse Service road Trail network	Unknown	Driveway access Privacy/Security	Public access to water Viewscape Trees and community green space Habitat corridor	CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary CC 40.4 & 41.4 Affected Utilities
19	Turtlehead Triangle at junction with Belcarra Bay Road	Public utilities Drainage and groundwater management Defined watercourse Service road Trail network Well	Unknown	Driveway access Privacy/Security Well	Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities Determine status of road in Park CC 35.2.d; Review Gazette notice N114163;

## APPENDIX 10.2 - CATALOG OF REVIEWED MUNICIPAL ROADS IN BELCARRA

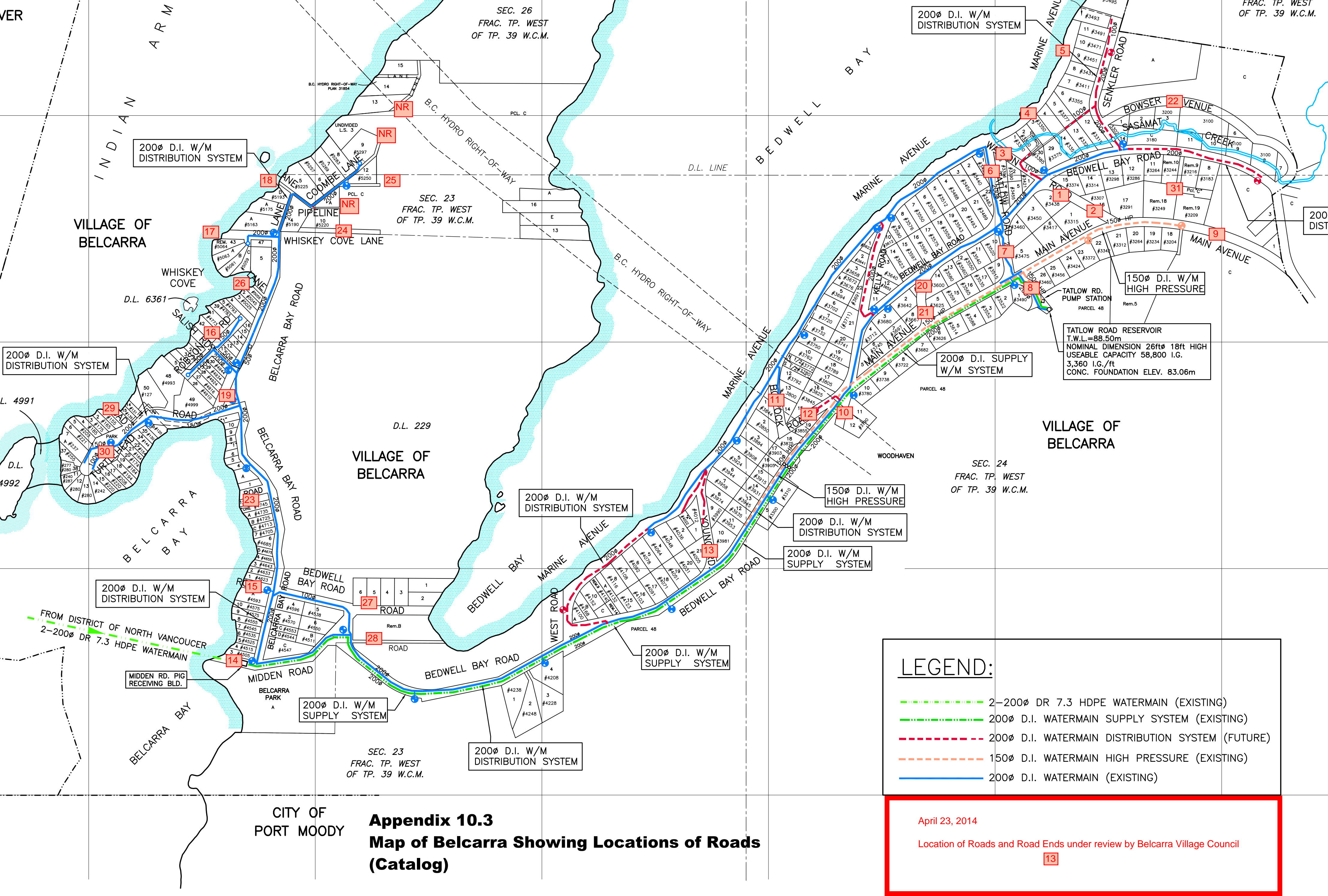
Site	Location	Current Public Use	Future/Potential Public Use	Historical and Current Private Uses*  *may be authorized by prior written approval	Defined Community Value  (from the Official Community Plan)	Legislative, Regulatory & Legal Considerations*  *Before closure any site would require the following plus the site-specific items listed on each line below: LTA Sec 86 Approving Officer Requirements Community Charter (CC) Sec 26 Property Disp. CC Sec 40 Road Closure Bylaw Zoning Bylaw 253
20	Taylor Rd - South of Bedwell Bay Road	NOTE: Bus shelter and mailboxes Drainage and groundwater management Trail network	Public utilities Local road Drainage and groundwater management Retaining structure Lot 1 to west is municipal (merge?)	Driveway access Private utility Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
21	Taylor Rd - North of Main Ave	Drainage and groundwater management Trail network	Public utilities Local road Drainage and groundwater management	Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	CC 40.4 & 41.4 Affected Utilities
22	Bowser Ave - East of Senkler Road	Drainage and groundwater management Access road (i.e. Sasamat Camp) Emergency access (i.e. Sasamat alternate route) Trail network Within Regional Park boundary Access to Crown lands, parks or private lands beyond	Public utilities	Driveway access Private utility Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	Determine status of Road in park per CC 35.2.d CC 40.4 & 41.4 Affected Utilities
23	4700 Blk Belcarra Bay Road - West of Belcarra Bay Road	Water access Drainage and groundwater management Retaining structure Trail network Radio sightline, navigation and communication systems	Drainage and groundwater management Retaining structure Trail network	Driveway access Private utility Privacy/Security Private occupation	Public access to water Viewscape Trees and community green space Habitat corridor	CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary CC 40.4 & 41.4 Affected Utilities
24	Belcarra Park - E of Whiskey Cove (Whiskey Cove Lane)	Landlocked, adjacent to Regional Park	Access to Crown Lands, parks or private lands beyond	None	Viewscape Trees and community green space Habitat corridor	Review status of Road 'adjacent ' to park per CC 35.2.d
25	Belcarra Park - East of Coombe Lane	Drainage and groundwater management Within Regional Park boundary	Access to Crown Lands, parks or private lands beyond	Private utility Private occupation Well	Viewscape Trees and community green space Habitat corridor	Review status of Road in park per CC 35.2.d CC 40.4 & 41.4 Affected Utilities
26	Lane at Whiskey Cove	None Adjoins Regional Park	Access to Crown Lands, parks or private lands beyond	Driveway access Privacy/Security Private occupation	Public access to water Viewscape Trees and community green space Habitat corridor	Review status of Road 'adjacent ' to park per CC 35.2.d CC 41.1 Shoreland Revenue Limitation



## APPENDIX 10.2 - CATALOG OF REVIEWED MUNICIPAL ROADS IN BELCARRA

Site	Location	Current Public Use	Future/Potential Public Use	Historical and Current Private Uses*  *may be authorized by prior written approval	Defined Community Value  (from the Official Community Plan)	Legislative, Regulatory & Legal Considerations*  *Before closure any site would require the following plus the site-specific items listed on each line below: LTA Sec 86 Approving Officer Requirements Community Charter (CC) Sec 26 Property Disp. CC Sec 40 Road Closure Bylaw Zoning Bylaw 253
27	Belcarra Park - East Extension off Belcarra Bay Road	Within Regional Park boundary	Trail network Access to Crown Lands, parks or private lands beyond	None	Public access to water Viewscape Trees and community green space Habitat corridor	Determine status of Road in park per CC 35.2.d CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary
28	Belcarra Park - Eastward Extension of Midden Rd	Within Regional Park boundary	Trail network Access to Crown Lands, parks or private lands beyond	None	Public access to water Viewscape Trees and community green space Habitat corridor	CC 35.2.d Determine status of Road in park CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary
29	Road at 100 Block of Turtlehead	Drainage and groundwater management	Public utilities Drainage and groundwater management Trail network Radio sightline, navigation and communication systems	Driveway access Privacy/Security Private occupation Private water access	Public access to water Viewscape Trees and community green space Habitat corridor	CC 41.1 Shoreland Revenue Limitation LTA 96 Confirm Natural Boundary CC 40.4 & 41.4 Affected Utilities
30	Turtlehead Road Cul de Sac	Public utilities Drainage and groundwater management Retaining structure Designated Municipal park	Public utilities Drainage and groundwater management Retaining structure	Driveway access Privacy/Security Private occupation	Viewscape Trees and community green space Habitat corridor	Clarify status as municipal park or road, LTA CC 41.1 Shoreland Revenue Limitation CC 40.4 & 41.4 Affected Utilities
31	Plan 74148 Regional Park Trail	Within Regional Park boundary Access to Crown lands, parks or private lands beyond	Public Utilities Drainage and groundwater management Trail network Access to Crown Lands, parks or private lands beyond	None	Viewscape Trees and community green space Habitat corridor	CC 35.2.d Determine status of Road in park Purchased by GVRD from private parties CC 40.4 & 41.4 Affected Utilities
NR		Three sites north and east of Coombe Lane				

## **Appendix 10.3      Key Map of Belcarra Showing Locations of Reviewed Roads**



**LEGEND:**

- 2-200Ø DR 7.3 HDPE WATERMAIN (EXISTING)
- 200Ø D.I. WATERMAIN SUPPLY SYSTEM (EXISTING)
- 200Ø D.I. WATERMAIN DISTRIBUTION SYSTEM (FUTURE)
- 150Ø D.I. WATERMAIN HIGH PRESSURE (EXISTING)
- 200Ø D.I. WATERMAIN (EXISTING)

April 23, 2014

Location of Roads and Road Ends under review by Belcarra Village Council

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**Appendix 10.3**  
**Map of Belcarra Showing Locations of Roads**  
**(Catalog)**

## Appendix 10.4    Municipal Highways - A Short Legal Guide

This document was prepared by independent legal counsel for the Village of Belcarra as a further discussion of legal aspects of roads and land use law.

### **What is a Highway?**

- The definition depends on the context in which the term is used.
- “Highway” is defined in the *Community Charter*:

““highway” includes a street, road, lane, bridge, viaduct and any other way open to public use, other than a private right of way on private property;”
- This definition applies to municipal bylaws – see section 40 of the *Interpretation Act*
- *Land Title Act* definition:

““highway” includes a public street, path, walkway, trail, lane, bridge, road, thoroughfare and any other public way;”
- *Motor Vehicle Act* definition:

““highway” includes

  - (a) every highway within the meaning of the *Transportation Act*,
  - (b) every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and
  - (c) every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited,

but does not include an industrial road;”
- *Transportation Act* definition:

**“highway”** means a public street, road, trail, lane, bridge, trestle, tunnel, ferry landing, ferry approach, any other public way or any other land or improvement that becomes or has become a highway by any of the following:

  - (a) deposit of a subdivision, reference or explanatory plan in a land title office under section 107 of the *Land Title Act*;
  - (b) a public expenditure to which section 42 applies;
  - (c) a common law dedication made by the government or any other person;



- (d) declaration, by notice in the Gazette, made before December 24, 1987;
  - (e) in the case of a road, colouring, outlining or designating the road on a record in such a way that section 13 or 57 of the *Land Act* applies to that road;
  - (f) an order under section 56 (2) of this Act;
  - (g) any other prescribed means;
- In this guide, we discuss municipal highways only.

### **Types of Municipal Highways**

- Virtually all municipal highways will be dedicated public highways created under section 107 of the *Land Title Act* (see more detailed discussion below).
- Some “highways” may not actually be dedicated municipal public highways – it is always necessary to look for a Land Title Office survey plan that formally dedicated that particular highway to the public.
- Some “highways” may actually be held by the Village under a statutory right of way agreement. This is not recommended for future use for the following reasons –
  - o Unlike dedicated highways, these highways cannot be transferred to purchasers,
  - o The question arises whether traffic bylaws apply to these “highways”,
  - o It is possible the Village’s use of the highway could be terminated by the land owner for a breach by the Village of the statutory right of way agreement, and
  - o The land owner can always apply to the BC Supreme Court under section 35 of the *Property Law Act* for modification or cancellation of the statutory right of way agreement if one of the circumstances listed in that section applies.
- Some “highways” may be titled private land but deemed to be a public highway under the *Transportation Act*, section 42 – these are cases where public money spent on a travelled road (see the Transportation Act Regulation). In many case, the municipality must go to court to confirm the highway status of these travelled roadways.

### **Ownership of Municipal Highways**

- When the *Community Charter* came into force on January 1, 2004, the Village became the owner of municipal highways on that date (see section 35).
- For certainty, the Village is not the owner of the highways listed in section 35(2) of the *Charter*.

## **Creation of Highways**

- Dedicated public highways are created by the deposit in the Land Title Office of a subdivision, reference or explanatory survey plan under section 107 of the *Land Title Act*.
- Section 107 confirms there is no title (in the Land Title Office) to dedicated highways
- This means that not only the registered owner must sign a section 107 highway dedication plan, but also all charge holders who have charges (such as statutory rights of way) registered over the highway dedication area, because their charges will be removed from title.
- Some utility companies will not consent to a highway dedication because even though they have a right or are given a right to have their utilities within a highway, they prefer the security of a registered statutory right of way agreement.
- A section 107 highway dedication is a subdivision for which Approving Officer approval is required
- If for some reason Approving Officer approval creates a problem, section 99 of the *Land Title Act* allows fee simple titled land to be transferred to a municipality “for highway purposes” without Approving Officer approval.
- Municipalities have the right to acquire highways by expropriation.

## **Use of Highways**

- Highways (whether improved or not) must be open to the public for traffic use
- The public has the right to use an unimproved highway only in the condition that the public finds it – the public has no right to improve road allowances for access purposes, nor can a person compel a municipality to improve a road allowance for access purposes.
- A municipality will have an action in trespass against anyone who removes trees or makes any other unauthorized use of highways. Trespasses not only allow persons to use municipal highways without any payment, but they also pose liability risks to the Village.
- Despite the public’s right to use highways, Council may temporarily restrict or prohibit public traffic pursuant to section 38 of the *Community Charter* – note this authority can be delegated.
- Council may also, pursuant to section 40 of the Community Charter, close a highway, or portion of it, to all or some types of traffic without affecting its status as a highway – that is, without removing its dedication as a highway.

### **Statutory Permissions to Use Highways**

- Various provincial and federal statutes allow public utilities the right to use municipal highways for their purposes – for example, see the *Hydro and Power Authority Act*, the *Utilities Commission Act*, etc.
- Under the Canada *Telecommunications Act*, if a telecommunications company is unable to obtain a municipality's consent to construct works under a highway, the CRTC is entitled to resolve the dispute and impose terms of highway use.

### **Regulation of Highways**

- The *Community Charter* and *Motor Vehicle Act* grant municipalities a wide range of specific powers to regulate, and in some cases, control and prohibit, vehicle, pedestrian and traffic, parking, vehicle sizes and loads, and various other matters.
- Such a traffic regulation bylaw would likely address parades and similar uses of highways.

### **Application of Canadian Charter of Rights and Freedoms**

- The Canadian *Charter of Rights and Freedoms* guarantees the public's freedom of expression.
- A municipal bylaw could be quashed by the courts if it overly restricts a person's ability to communicate on a highway – whether by placing newspaper boxes, election signs, event posters on utility poles, etc.

### **Private Permissions to Use Highways**

- Council may, by resolution, grant “a licence of occupation or an easement, or permit an encroachment” under the *Community Charter*, section 35(11).
- An encroachment could be permitted by a license, which is not an interest in land and which does not “run with the land”. An encroachment could also be permitted by an easement, which is an interest in land, and which is usually registered in the Land Title Office, and which “runs with the land” such that it binds all owners from time to time of the servient land (burdened land) and benefits all owners from time to time of the dominant land (benefitting land).
- Although there is no title to dedicated highways, the Land Title Office will raise title to a portion of a highway for the purpose of registering an easement over the highway for the benefit of adjoining land.
- Likely an easement would be used for a significant encroachment (such as the encroachment of a portion of a building), whereas a license would be used for a lesser encroachment (such as the overhang of a sign over a sidewalk) or for a use without an encroachment (such as use of a highway for a neighbourhood party).

- Whether the permission is in the form of a licence of occupation or an easement, as a general statement neither a license nor an easement grants exclusive use. The highway use agreement needs to allow the municipality to use the area above and below the encroachment.
- In Covucci v. Trail (City), Trail permitted an owner of land adjoining an unimproved lane to use the entire lane for landscaping and yard purposes, subject to the City's right to terminate the arrangement on 30 days notice. That use effectively prevented anyone else from access to the road allowance. The Court concluded that the license was invalid. The Court noted that:

*The substance of the arrangement...is the grant of a right to occupy the land. That is something quite different from a right to encroach... Should it be suggested that the reasoning in this decision would affect the validity of ordinary encroachment agreements, it should be kept in mind that such an agreement gives rise to entirely different considerations.*

Covucci was decided before section 35(11) of the *Community Charter* was enacted. Perhaps section 35(11) has resolved the problem created by Covucci, or perhaps it was the grant of exclusive use that was considered improper in Covucci. There are no court decisions on section 35(11) of the *Charter*.

### **Procedure for Highway Use Permissions**

- The *Community Charter* requires all actions of the municipality – including the approval of contracts – to be done by the Council, unless Council, by bylaw, delegates its power, duties and functions – for example, to a municipal officer.
- This means highway use agreements (whether licenses of occupation, easements or other encroachment agreements) must be approved by Council resolution unless Council has delegated this power.
- It is not necessary for Council (or the delegated officer) to have a policy about highway use agreements – because even similar types of highway uses (neighbourhood parties, for example) may have quite different requirements (for example, some may permit alcohol, some not, or some may permit amplified music, some not).

### **Highway Use Agreements**

- It is useful for the Village to have its own good form of highway use agreement (and we have a precedent we could send you), but changes to the agreement will be needed in almost every case.
- If a highway use agreement is being entered into with a corporation or society, the Village must obtain a corporate registry search to confirm the corporation or society is validly incorporated, in good standing as to the filing of its annual reports, is not in liquidation or receivership, etc.



- The Village must be careful that it only enters into a highway use agreement with legal entities – that is, individuals, societies and corporations. An unincorporated group of individuals – a book club, for example – is not a legal entity.
- The highway use agreement must require liability insurance on the part of the highway user. The Village should consider (with the assistance of advice from its insurance advisor) the amount of liability insurance and whether the Village should be named as an additional insured. Where an agreement spans a number of years, it should permit the Village to require periodic increases in the amount of liability insurance, and the Village should consider whether increases are needed.
- The Village should always confirm the required insurance is in place at the beginning of the agreement, and where the agreement spans a number of years, at least once a year.
- The highway use agreement should contain a release of liability, whereby the highway user agrees not to sue the Village. The agreement should also contain an indemnity whereby the highway user agrees to compensate the Village for all amounts the Village may owe to a third party.
- If the Village wishes to grant an interest in the highway (such as an easement or statutory right of way), the Village must first post and publish a notice of the proposed disposition under section 26 of the *Community Charter*.

#### **Financial Considerations for Highway Use Agreements**

- Section 25 of the *Community Charter* prohibits the Village from granting financial assistance to a business. Section 24 confirms that “disposing of land or improvements, or any interest or right in or with respect to them, for less than market value” is a type of financial assistance.
- If the Village wishes to allow highway use by a non-business at less than market value, then under section 24 of the *Charter*, the Village must first post and publish notices of Council’s intention to give that financial assistance to the non-business.
- Market value is generally defined as the highest price a willing buyer agrees to pay to a willing seller. In some cases, assessment is used as a rough guide to the market value of the fee simple interest. Appraisals may be used to estimate market value of the fee simple or lesser interests. It is sometimes said that a rough guide to the market value of leases (exclusive use interests) is annual rent equal 7% of the fee simple value.
- Market value of a highway use permission will depend on the extent of highway area that can be used, the amount of use, the type of use, the duration of use and other factors. In any case, market value will not be some nominal amount.
- Market value will change over time, and almost certainly will increase over time. Although commercial high value leases often provide that regular rent increases will be decided by arbitration, this is not applicable for highway use agreements due to the cost and complexity of arbitration. A suggestion is for the highway use agreement to provide that the highway use payment increases automatically every year by a specified percentage – perhaps 3% or a percentage linked to CPI.

- GST is likely payable in addition to the highway use fee.
- There are substantial transaction costs associated with highway use agreements – legal costs of preparation of the highway use agreement, possibly survey costs, possibly land title office costs, administrative costs. The Village will need to ensure that its highway use charges are not only adequate to obtain market value for the highway use, but that they also compensate the Village for its associated costs.
- Under highway use agreements, persons are given permission to use highways under a contract. The contract governs. Although a municipality may have a highway and traffic bylaw that provides no person may encroach on a highway except pursuant to a highway use agreement, this is not a situation where the bylaw governs the amount of highway use payment or the other terms of the highway use. It is a contractual arrangement.

### **Disposition of Highways**

- Council can close to traffic and cancel the dedication of a municipal public highway by following the procedure in sections 40 and 41 of the *Community Charter*.
- The Land Title Office will not accept any highway closure bylaw unless there was a survey plan filed in the Land Title Office which dedicated that highway to the public.
- It is useful to have a standard highway closure bylaw, but it will always need to be revised in each particular case. The highway closure bylaw does not authorize the sale of the closed highway (see steps below).
- If the former highway is being transferred to an adjoining owner, in most cases Council will want the former highway to be consolidated with the owner's land, and this will be absolutely necessary if the former highway does not meet bylaw requirements as a stand-alone parcel.
- It is also useful to have a Highway Transfer Agreement with the proposed purchaser. This agreement would be subject to Council adopting the highway closure bylaw. This agreement governs conditions precedent (adoption of highway closure bylaw), responsibilities (owner must order and pay for the survey plan of closed road area and the consolidation plan), timing (closing is 15 business days after the condition precedent is removed), environmental terms (owner accepts former road in its current condition), etc.
- Before Council approves of the Highway Transfer Agreement, the Village must post and publish a notice of Council's intention to dispose of the highway as required by section 26 of the *Charter*. The steps then are:
  - o Negotiation of Highway Transfer Agreement.
  - o Posting & publication of notice of intended disposition under *Charter*, section 26.
  - o Council resolution to approve signing and delivery of Highway Transfer Agreement (this resolution approves the transfer of the highway, once closed, to the purchaser).
  - o Survey plan of closed highway area.

- Notice to utilities & other fulfillment of *Charter*, sections 40 and 41 requirements.
- Three readings of highway closure bylaw (with attached survey plan).
- Posting & publication of notice of opportunity for persons to make representations to Council on highway closure.
- Public representations.
- Adoption of highway closure bylaw (which steps removes the condition precedent in the Highway Transfer Agreement).
- Closing in Land Title Office of transfer of former highway to purchaser and consolidation of former highway with purchaser's land.

### **Financial Considerations for Disposal of Highways**

- The same financial considerations discussed above for highway use agreements apply when Council is disposing of former highway.
- Because Council is disposing of the fee simple interest, the fee simple interest can be ascertained by an appraisal or in some cases by comparing the road area and size to the assessed value of the adjoining land. This latter calculation method was approved by the BC Court of Appeal in the Miller v. Salmon Arm case, but with the caution that this rough calculation method may well not be appropriate in every case – for example, for large parcels in dense urban areas.
- GST will be payable in addition to the purchase price.
- There are substantial transaction costs associated with highway dispositions, such as legal costs of preparing the Highway Transfer Agreement, survey costs, possibly appraisal costs, newspaper publication costs, Land Title Office registration costs, legal costs of the closing, etc. The Highway Transfer Agreement ought to assign as many of these costs as possible to the purchaser. The purchase price should represent fair market value of the highway land, plus compensate the Village for the costs that cannot be borne by the purchaser.
- Because the purchaser will not pay property taxes on the purchased highway area until the following calendar year, the Highway Transfer Agreement ought to require the purchaser to pay a specified cash contribution to the Village in lieu of property taxes for the year of purchase.
- The purchaser will also have to pay Property Transfer Tax on its acquisition of the former highway.

### **Provincial Right of Resumption**

- Section 35 of the *Community Charter* provides that the Village's ownership of highways is subject to the Province's right to resume ownership of the highway for the purposes listed in section 35.
- When the Village closes a highway and removes its dedication, title to the former highway is raised subject to the Province's right of resumption.
- This right of resumption will seldom be acceptable to a purchaser of the former highway.

- This right of resumption can be cancelled by filing in the land title office a certificate signed by the Corporate Officer pursuant to the Resumption of Highways Regulation.
- Note that this certificate can only be signed by the Corporate Officer in the case of a land exchange or if the closed highway is transferred to an adjoining landowner for the purpose of consolidation.
- If the former highway is consolidated with the municipality's own land or if for another reason the Corporate Officer cannot issue the certificate, then the right of resumption can only be removed by a Ministerial order under section 35(10)(a) of the Community Charter. Note that this is time-consuming process.