

REGIONAL DISTRICT OF NANAIMO

**REGULAR BOARD MEETING
TUESDAY, OCTOBER 27, 2015
7:00 PM**

(RDN Board Chambers)

A D D E N D U M

PAGES

5. COMMUNICATIONS/CORRESPONDENCE

(All Directors – One Vote)

2-16 **Deborah Blum**, re Access to historic, public traveled roads.

17-18 **Todd Stone**, re Transit Funding Update.

From: Deborah blum
Sent: Monday, October 26, 2015 12:49 PM
Subject: RE: Cedar Trail Stewards presentation - Oct. 27 RDN Board Meeting

I also statements the Horse Council, relevant to our presentation.

BR, Deborah

Subject: Cedar Trail Stewards presentation - Oct. 27 RDN Board Meeting
Date: Mon, 26 Oct 2015 18:48:19 +0000

I attach our presentation - we won't read it verbatim (people hate that), I promise.

We'd also be glad to have this distributed via hard copy to accompany our presentation, in lieu of or in addition to a projector version.

I also attach petition comments (to which the presentation refers).

[from https://www.change.org/p/regional-district-of-nanaimo-city-of-nanaimo-province-of-british-columbia-are-you-concerned-about-blocked-trails-roads-historically-used-by-the-public?recruiter=64966891&utm_source=share_petition&utm_medium=facebook&utm_campaign=auto_publish&utm_term=des-lg-share_petition-no_msg&fb_ref=Default]

I'll plan to appear tomorrow by 6 pm in any case.

BR, Deborah



Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

Re: Blocked access to historically used roads and trails.

To Whom It May Concern,

Horse Council BC is a 24,000 plus member service organization; our mission is to work together on behalf of the equine interests of our members. We collaborate with individuals, other equine associations, businesses, industry professionals, and government to strengthen communication, education, and safety related to horses. We strive to preserve and enhance equestrian use of public lands and historic trails, and to promote and foster participation in all varieties of equine activity. All Horse Council BC members have \$5 million of third party liability insurance relating to their horses.

We are pleased to submit this letter of support for the Regional District of Nanaimo's equestrian community's efforts to preserve access to roads and trails leading to the Boat Harbour waterfront and neighbouring areas. We understand that there are numerous instances where new landowners are blocking the public from accessing historically public trails and roads. These trails and roads are areas which have previously been enjoyed by generations of hikers and riders. It concerns us that the landowners would seek to obstruct public access to trails when these trails are clearly supported by historical evidence as having accrued public use rights. Documents relating to the development of the Boat Harbour area continually supported the maintenance of a public right of way from Boat Harbour to Hemer Provincial Park during a 1990 initiative to develop the area.

We would urge you to seek a way to accommodate the needs of trail users in Nanaimo to preserve access to those areas. Eco-tourism is on the rise, and establishing and preserving trails will bring more visitors and related economic benefits to the Nanaimo area in future years. Trails are a valuable resource for attracting residents to a community and keeping citizens healthy and active, and the preservation of safe and unspoiled nature trails is a priceless legacy for future generations. Horse Council BC would encourage the District of Nanaimo to place a priority on preserving the community's excellent trail network.

Please accept this letter as confirmation that Horse Council BC is in support of the efforts of local equestrians to preserve continued access to historically public trails and roads in the District of Nanaimo area. Please direct any inquiries for Horse Council BC to Lisa Laycock, Executive Director, at the number listed below.

Yours truly,

Lisa Laycock, Executive Director, Horse Council BC

27336 Fraser Hwy, Aldergrove, BC V4W 3N5 Tel: 604 856 4304 Toll Free: 1 800 345 8055 Fax: 604 856 4302



ALARMING TREND

APPROPRIATION OF HISTORIC PUBLIC TRAVELLED ROADS/TRAILS TO PRIVATE USE



- **We'll speak to the appropriation of historically used roads/trails that aren't gazetted – common law highways/rights of way**
 - **although appropriation IS also an issue on gazetted rights of way**
- **Landowners are emboldened by the absence of formal objection**
- **35+ pages of petition comments illustrate considerable public anger and demands for appropriation to stop**

- **Failure to stop appropriation signifies**
 - **Unacceptable gift of public land to private persons by RDN /province**
 - **Unacceptable loss of park, neighbourhood and waterfront access**
- **Perception is, RDN/ province don't treat public access with same priority as do other parts of Canada, England, Europe, US [ref. petition, international comments]**
- **This can't perpetuate – also given initiatives to attract tourists, retirees, and horse riding, biking and hiking industries here**

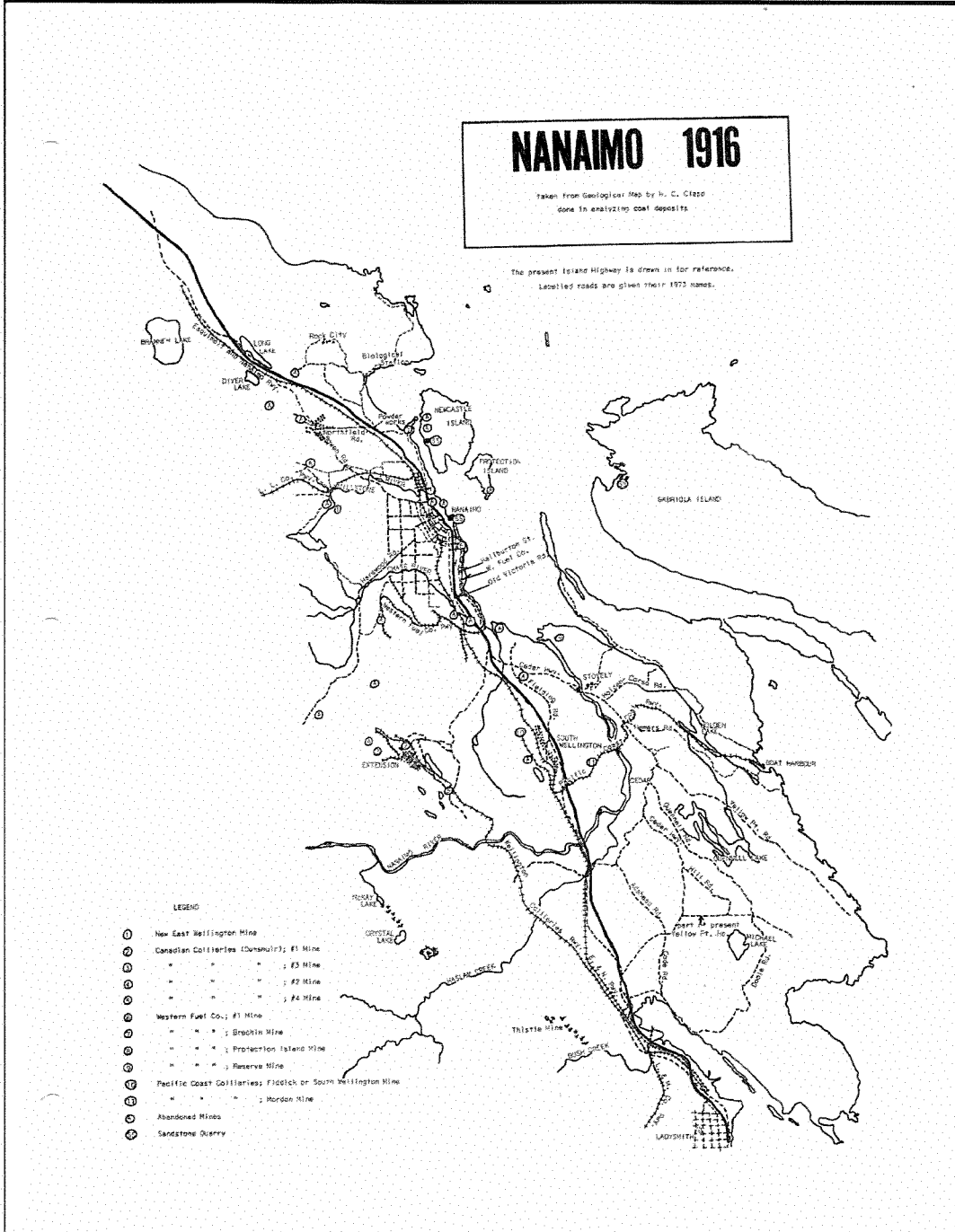
FOCUS HERE IS ONE CASE

BLOCKADES OF ROADS/TRAILS IN HISTORIC BOAT HARBOUR AREA

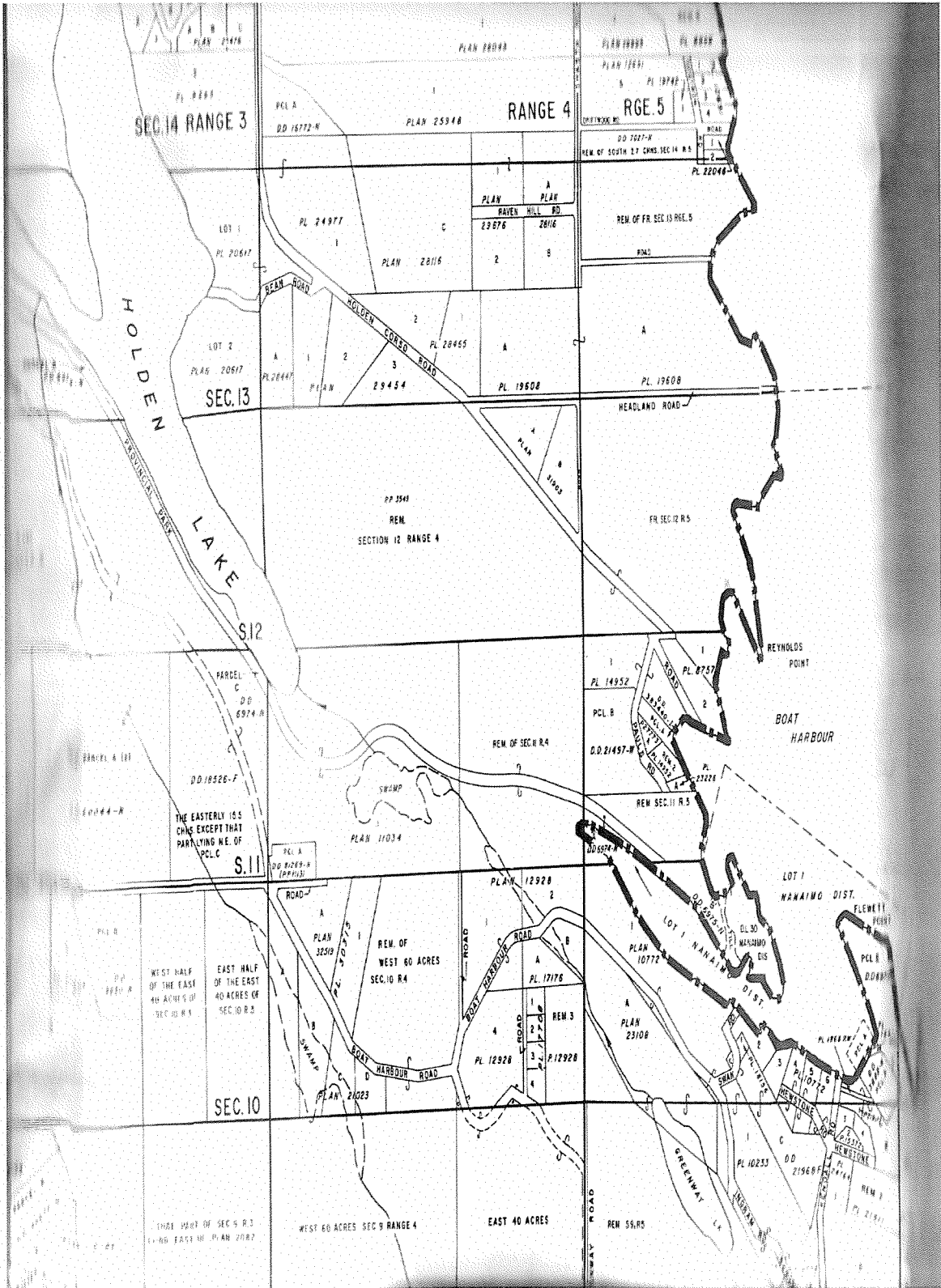
ACTION HERE WOULD ESTABLISH BC PRECEDENT

1 – WHAT BOAT HARBOUR ROADS / TRAILS

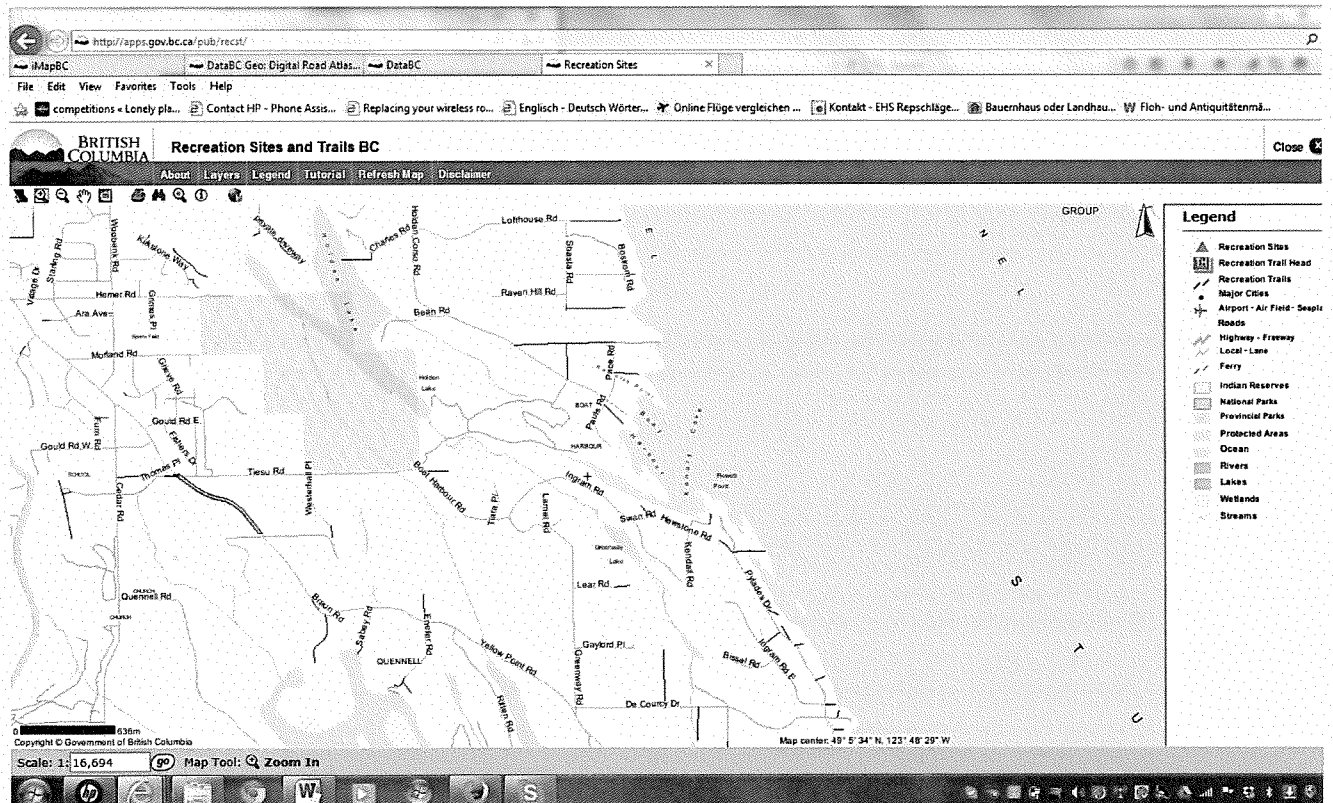
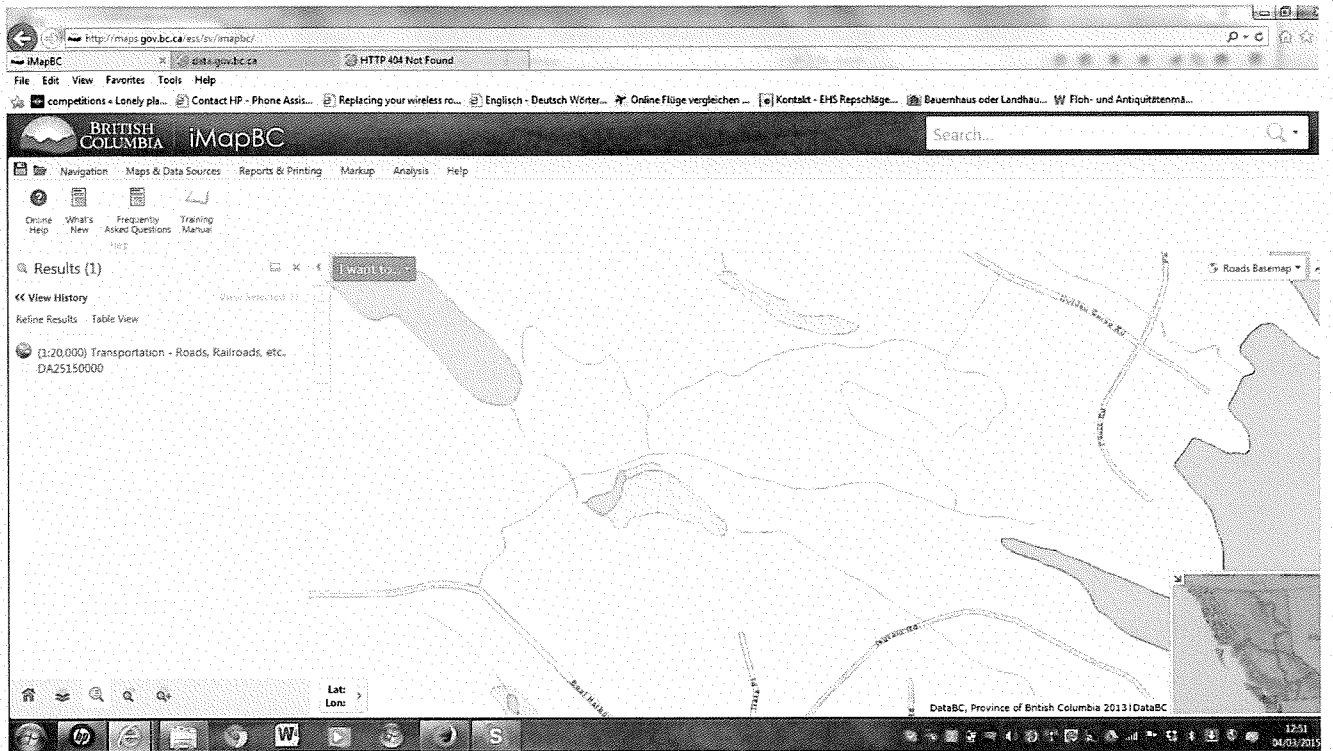
■ **1909 PCCM (PACIFIC COAST COAL MINES) RAILWAYS FORMER RAIL BED to former port site**



BC MINISTRY ENVIRONMENT MAP – MARKS PCCM RAIL BED AS PROVINCIAL PARK



- **AND substantial branch roads <http://maps.gov.bc.ca/ess/sv/imapbc> (some former logging roads) – AND waterfront trails**



2 – ROAD/TRAIL ENTRANCES BLOCKADED BY SOLID CONCRETE AND PADLOCKED METAL STRUCTURES, POST AND WIRE FENCES

- **Access to former PCCM rail bed (Morden Colliery trail) now ends abruptly at Hemer Park boundary**
- **A section of Hemer Park can't be accessed now except by water – effectively appropriated to private use**
- **Petitioners note harassment, aggressive and extreme measures by landowner to intimidate and prevent use**
 - **men with guns in camouflage, men patrolling on ATV's, men hanging out of helicopter yelling at people; RCMP called**
- **Destruction of neighborhood character and wildlife/riparian habitat (eg historic beaver dam), abandoned 25 meter “barges” + seeping styrofoam**

3 – LEGALITY OF BLOCKADES?

EXCEPTIONS TO LAND TITLE – COMMON LAW HIGHWAYS

- **May be more legal bases**
- **Public highways don't need to be noted on land title, say Transportation and Land Title Acts**
- **2013 Supreme Court BC /other cases say that a road/trail is a (common law) highway if**
 - **landowner intended to dedicate the road/trail as a highway, and**
 - **public accepted that highway**
- **Public acceptance is inferable from public use**
- **Landowner intent to dedicate may be express or inferred from conduct**

- **Landowner dedication is inferable from free, uninterrupted public use of roads/trails with landowner's knowledge (acquiescence)**
- **Time periods for use may be as short as 7 years**
- **Landowner acquiescence in use and dedication isn't determined only by current owners**
- **Once a road/trail is a public highway, it's always a highway – retains that character against all owners**

4 – BOAT HARBOUR ROADS – DEDICATION

- **There is much evidence as to historic, continuous public use of roads/trails that emphasizes dedication – DETAILED IN NEXT HEADING**
- **Access was never restricted, challenged or patrolled by landowners until 2014**
- **Evidence of continuing use would suffice to establish dedication (ie common law highway) – but there is also evidence of more explicit dedication; more than acquiescence**
- **Mayo Holdings (former landowner) and School District 68 collaborated, with federal government funding circa 1974, to establish environmental sites and trails in Boat Harbour area**
 - **Project was initiated by Ray Kulai and Rajindi Mayo (representing landowner)**
 - **Detailed book was prepared by students and others who studied area**
 - **Book noted wildlife – eg Beavers of Boat Harbour, and**

50. Holden Lake Petroglyph site is located about one thousand yards north of the Holden Lake trail on our Boat Harbour Centre. Walk out the Holden Lake Trail to the point where you see the water. A rather rough trail leads north to a substantial outcrop of sandstone. Start looking!

- **1990 subdivision development documents for Boat Harbour evidence that landowner considered roads/trails public rights of way**
- **OCI Boat Harbour Development Environmental Impact Assessment Report of Dec 1990 references “continued public access to the Boat Harbour site”**
 - **Noted use by Cedar residents and area visitors**
 - **Noted “need to develop plans to allow...various users of the park to have reasonable access to the foreshore areas...”**
- **Persons involved with public initiatives at the time are adamant that landowner conceded that roads/trails were public rights of way**
- **There is evidence from hikers who were actively encouraged to use roads/trails and waterfront by landowner**

5 – SUSTAINABILITY OF COMMON LAW CASE

- **We'd expect competent legal counsel to advise that the chances of sustaining argument that the roads/trails are common law highways significantly exceeds the balance of probabilities of 50%**
 - **Subject to detailed testimonials from historic users and as above**
- **We'd expect the usual caveats – these cases are decided strictly on their facts and all litigation is inherently uncertain**
- **Experienced BC lawyer says there IS a case**

6 – OTHER OPTIONS FOR PUBLIC ACCESS – S 42 TRANSPORTATION ACT?

- **42 (1) says – [exceptions...], if public money is spent on a travelled road that is not a highway, the travelled road is deemed... a highway**
- **If s 42 applies, cases suggest that it shouldn't be necessary to prove “dedication” – that public money was expended, suffices**
- **We don't know if Ministry of Transportation (MOT) or predecessors spent money on Boat Harbour roads/trails – maybe this occurred after PCCM's insolvency**
 - **MOT suggested we file a Freedom of Information Act query for expenditure information**
- **Federal grant money was spent at Boat Harbour in 1970's – didn't relate only to roads/trails**

7 – ARE ROADS EXPRESS EXCEPTIONS TO TITLE – EXCEPTIONS IN ORIGINAL CROWN OR E&N RAILWAY LAND GRANTS?

- **RDN inquiries may have covered express exceptions to title**
- **“... travelled streets, roads, trails and other highways, existing on said lands at date of land grant... are excepted from the Grant”**
 - **May be noted in historic field and survey notes, Finance Act documents**
- **Exceptions to title as in Mahle land grant?**

“Excepting ... a right of way 30 feet wide for the construction of a Railroad running from the South Wellington Coal Mines to Boat Harbour..”
- **Exceptions filed in PCCM application to construct railway circa 1909?**

8 – BOAT HARBOUR ROADS/TRAILS – HISTORIC USE

There is much evidence as to historic, continuing and public use of roads/trails

- **PCCM Railway was constructed circa 1909**
- **Boat Harbour coal dock, wharves, bunkers and loading facilities accommodated the “largest ocean-going steamers”**
- **Conveyor belt at site was one of first of its kind in BC**
- **Coal was first shipped from Boat Harbour in July 1909**
- **Recollections of pioneers and 75+ year residents / other users attest to extensive use of roads/trails for over 100 years by horses, wagons, riders, cyclists, walkers and motor vehicles to reach waterfront and adjoining roads and neighborhoods**
- **Commuters and others used roads/trails to reach work sites and/or persons working and living at the site at least from 1908 to 1940’s [*“Boat Harbour Echoes From the Past” has anecdotes and photos on travel and activity*]**
- **Workers resided at waterfront (eg Chinese community)**
- **PCCM liquidated in 1922 but industry at Boat Harbour continued to at least the 1940’s. Site still has remnants of industry.**
- **Kenary cove and point are historic First Nations sites**
- **RDN and province consider the rail bed a crucial, historic segment of the Morden Colliery trail network and significant tourist attraction with its historic role in the coal industry and proximity to ferry and air services**
- **It is BC designated historic trail 24 [HISTORICAL TRAILS & SITES COMMITTEE OF BC HISTORICAL FEDERATION]**

- **Construction of a bridge over the Nanaimo River was approved on the assumption of continuing access to the Boat Harbour waterfront**

9 – ACTIONS BY RDN / PROVINCE?

- **Resolve any internal jurisdiction issues that prevent action – eg if RDN pleads jurisdictional constraints on basis that roads/trails are Ministry of Transportation (MOT) jurisdiction**
 - **There is precedent for no action by MOT in similar cases – MOT declined to clear gazetted public waterfront access in Cedar area**
 - **MOT advised public to ask RDN parks department to deal**
 - **RDN parks department didn't clear these accesses – catch-22**
- **Apply existing legal options. Negotiate/speak with landowner immediately about removing barriers from public (common law) travelled highways/rights of way – maps/details above.**
 - **It is an offense to block highways/public rights of way**
- **If landowner does not comply within 30 days**
 - **RDN removes barriers at landowner cost**
- **Employ competent legal counsel**
 - **But litigation is not inevitable**
- **Consider resolution by combination of legal and business options – (eg) purchase, reduction in property taxes for public areas**
- **Legislative options to supplement common law as in UK may be inevitable but too distant to redress current barricades**

■ **Can't delay action. Cannot rely on RDN policy to demand green space dedication in connection with subdivision proposals. And some witnesses as to historic use are in their late 80's and 90's.**

■ **Civil disruption concerns if no action?**

❖ **RDN /province could apply principles to other cases too**

❖ **Has ramifications for roads/trails such as that between main Cable Bay trail and Joan Point Park**

❖ **Dangerous to leave initiative to reclaim roads/trails to public use with private individuals, given extensive ramifications of case**

❖ **Public needs to know RDN decision asap, to enable assessment of next actions**

10 – UPDATES AT LATER BOARD DATE – EG ACTIONS BY JOINT TRAILS AND ACCESS COMMITTEE, FIRST NATIONS, MEDIA





October 22, 2015

Joe Stanhope, Chair
Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo BC V9T 6N2

corpsrv@rdn.bc.ca

RDN CAO'S OFFICE			
CAO	✓	GM R&P	
GMS&CD		GM T&SW	✓
GM R&CU		DF	
OCT 23 2015			
DCS		BOARD	✓
CHAIR	✓		

Reference: 250998

Dear Chair Stanhope:

Re: Transit Funding Update

I am writing to share an important initiative the provincial government has undertaken to support transit service in British Columbia.

As you are aware, on February 17, 2015, the Province unveiled its BC Budget with a clear objective to maintaining balanced budgets. As such, it is imperative that we continue to not only ensure that transit is delivered as efficiently as possible, but also that every transit dollar possible is invested in the delivery of front-line services.

In my letter to you of May 11, 2015, I committed to finding solutions that would protect transit services for British Columbians. We have worked very hard to ensure we can sustain stable levels of transit services over the current three-year service plan period.

Many of these initiatives are underway. BC Transit continues to work with local governments to develop broad and clear strategies based on local ideas for service innovations, cost savings, and increased revenues. This includes working creatively with our partners and contractors to generate as much revenue as possible from advertising in order to reduce the costs of transit for taxpayers and riders. This work will be supplemented by the upcoming recommendations of the Crown Agency Review of BC Transit, which will focus on new revenue opportunities as well as efficiencies.

.../2

In support of this effort, I am pleased to advise that the provincial government has amended BC Transit's regulations to enable BC Transit and its local government partners to fully utilize the three-year provincial investment of \$312 million in transit operating funding, as outlined in the BC Transit 2015/16 Service Plan. Specifically, for the next three years, any operating savings realized in a transit system will now be able to be carried forward to offset inflationary increases in costs for that transit system. This regulatory change reflects the provincial government's commitment to provide BC Transit and local communities with the flexibility and a valuable tool to help maintain transit service levels over the next three years, while working to deliver services more efficiently and exploring opportunities to invest transit funding more effectively.

I appreciate the hard work that BC Transit and local communities have done to date to manage costs and optimize revenues and service levels, and I look forward to further success as we continue to work together to deliver transit services that respect the needs of both transit users and taxpayers. The Province of British Columbia's financial commitment to transit operations remains the highest in Canada, twice the national average, and we are committed to maintaining this leadership position.

As a next step, BC Transit will be following up directly with each service area to explore how these opportunities can be applied in a manner that most efficiently delivers the local transit services that are so important in each community.

Sincerely,



Todd G. Stone
Minister

Copy to: Kevin Mahoney, Chair, Board of Directors
BC Transit

Manuel Achadinha, President and CEO
BC Transit