



**REPORT FOR: CROWE VALLEY CONSERVATION AUTHORITY WATERSHED ADVISORY BOARD**

**REGARDING: ONTARIO REGULATION 159/06, PERMIT APPLICATION NO. 088/22 FOR PERMISSION TO CONSTRUCT A NEW PERMANENT DOCK.**

**DATE: NOVEMBER 17, 2022**

An application for development has been submitted by Ms. Kim Ferguson (with Ms. Joan Phillips authorized to act as agent) with regard to Ontario Regulation 159/06: Crowe Valley Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses, made pursuant to Section 28 of the Conservation Authorities Act, R.S.O. 1990, as amended.

### **Executive Summary**

The applicant proposes to construct a new permanent dock along the shoreline and over the lakebed of Paudash Lake. The application is recommended for denial as it does not conform to the Crowe Valley Conservation Authority's (CVCA) Watershed Planning and Regulations Policies, which state that new permanent docks are not permitted. The subject property has an existing dock system consisting of temporary floating docks that are moved and secured seasonally. CVCA policies allow temporary docks as well as minor shoreline alterations, if required, to create a secure anchor point to secure a temporary dock.

The proposed development does not conform to the CVCA's Watershed Planning and Regulations Policies for the following reasons:

1. The proposed development would be located within hazardous lands, being the flood hazard associated with Paudash Lake. Therefore, the proposed development has the potential to negatively impact the control of flooding. This would be in contravention to Ontario Regulation 159/06.
2. The proposed development does not conform to the CVCA's Watershed Planning and Regulations Policies, specifically:
  - a. CVCA policies do not allow for new permanent docks.
  - b. The proposed dock does not constitute a replacement of an existing dock, and is therefore considered new development within the floodplain.

### **Hearing Process and Role of the CVCA's Watershed Advisory Board**

When an application to develop does not conform to the CVCA policies, CVCA staff must recommend the application for denial. As outlined in the Conservation Authorities Act, the applicant must be informed of their ability to request a Hearing

with the CVCA's Watershed Advisory Board. The Watershed Advisory Board is tasked with reviewing the application to develop, considering the applicable CVCA policies that have not been satisfied, and ultimately making a decision as to whether the application is consistent with the tests of the Regulation. Ontario Regulation 159/06 is attached as **Appendix A**.

### **Tests of the Regulation**

The development will not affect the control of:

- flooding,
- erosion,
- dynamic beaches (not applicable in CVCA watershed),
- pollution or
- the conservation of land

The CVCA Watershed Advisory Board may grant or refuse permission. Permission may be granted with or without conditions. The applicant will receive written notice of the decision. The notice of decision must state the reasons for which the application was either approved or refused. The applicant has the right to appeal the decision within 30 days of receipt of the notice of decision. Appeals are to the Ontario Land Tribunal. The applicant can appeal a refusal or the conditions of an approval.

Guidelines for hearings under Section 28 of the Conservation Authorities Act are attached as **Appendix B**.

### **Subject Lands**

The property is located at 1025 Culvert Drive in the Municipality of Highlands East. The property has approximately 35m frontage on Paudash Lake. Existing development on the property includes a dwelling, two accessory buildings (including an onshore boathouse), stairs to the waterfront, and a temporary dock. The property is considered to be within the jurisdiction of the Crowe Valley Conservation Authority based on the flooding and erosion hazards associated with Paudash Lake. The property is also located within 120m of a Provincially Significant Wetland, located immediately to the south. A map of the subject property is attached as **Appendix C**.

### **Proposal Description**

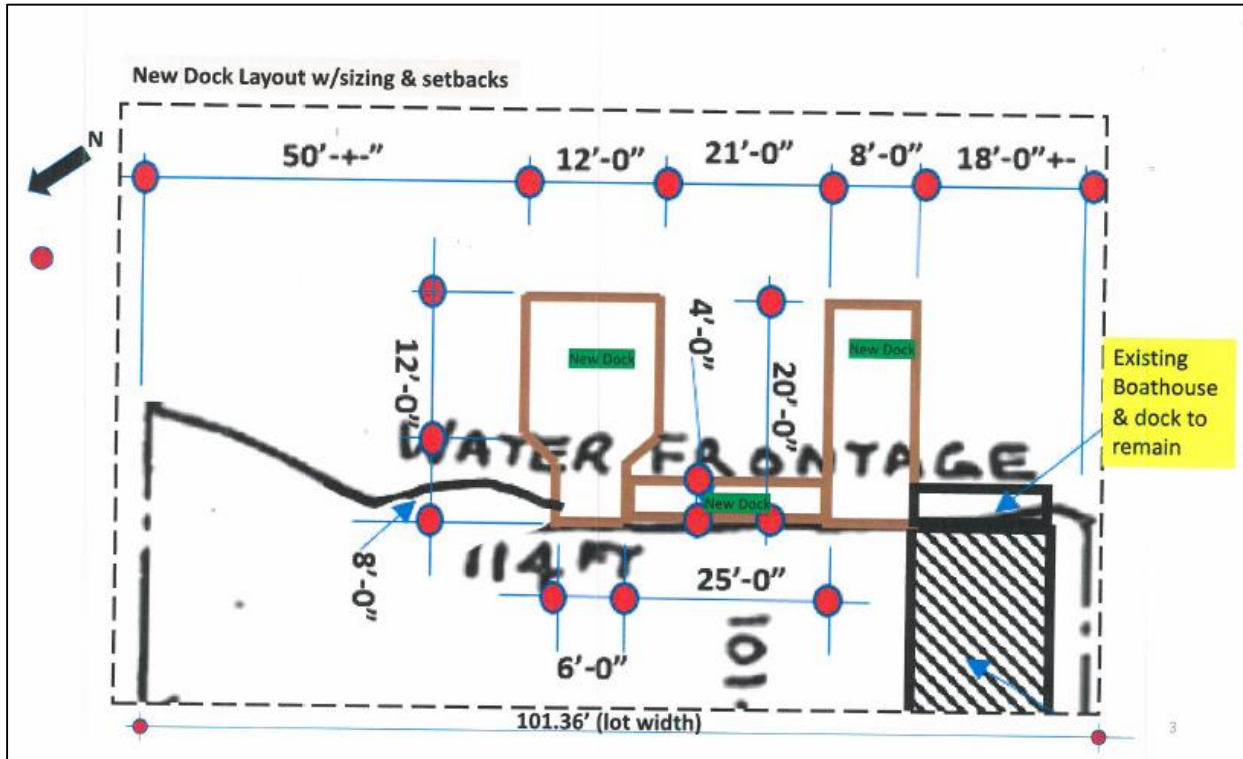
The applicant proposes to construct a new permanent dock system. The application was originally submitted on April 19, 2022. CVCA permit application #088/22 is attached as **Appendix D**.

The proposed permanent dock would be built on helical piles, as per the design drawings prepared by R&J Machine. The proposed dock would be U-shaped, consisting of three sections:

- **Section 1** - 8' x 20' = 160 ft<sup>2</sup>
- **Section 2** - 12' x 20' = 240 ft<sup>2</sup>
- **Section 3** - 4' x 25' = 200 ft<sup>2</sup>
- Total dock area = 400 ft<sup>2</sup>

**Section 1** and **Section 2** (above) would extend out into the lake. Section 3 would be built along 11.9m (39 feet) of shoreline. This represents approximately one third of the total shoreline. The existing boathouse has a dock on the lakeside, which spans another 5.5m (18 feet). This would result in 17.4m of the 35m shoreline being covered by permanent dock structures. In addition to the CVCA's dock-related policies, the CVCA has a waterfront access policy that limits water access points to a width no greater than 1.8m (6 feet). A water access point must take advantage of existing impacted or open areas along the shoreline, wherever possible. The CVCA considers the point at which docks contact the shoreline to be a

water access point. The temporary dock system can then expand once the dock is out over the lakebed and no longer impacting the shoreline, where water and land interact. Below is a site plan illustrating the proposed dock, as submitted with the application:



Detailed design drawings prepared by R&J Machine are attached as **Appendix E**.

## **Permanent Docks and Steel Pile Design Discussion**

CVCA staff recognize that a steel pile design does minimize the area of the dock system that would be in direct contact with the lakebed, and definitely represents an improvement from crib docks. The CVCA permits steel pile docks when replacing or repairing an existing permanent dock. In situations where there is no existing permanent dock, the CVCA allows the installation of a lift-up dock. This involves constructing an anchor point on land. A winch system is used to elevate the dock out of the water, where it can remain during the off-season and during times of flooding.

## **Background and Application Process**

The applicant and their agent started the CVCA permit application process in March 2022. A permit application was submitted on April 19, 2022. Various telephone and email communication took place between CVCA staff and the applicant's agent from April 18 to July 15. On April 22 the applicant's agent was informed that the proposed permanent dock does not conform to the CVCA's Policies. Floating (temporary) docks are not permitted to be replaced by permanent docks. The agent spoke with CVCA admin staff prior to this, on April 20th. The agent was told that if there is no shoreline alteration, that it is likely that a permit is not required. This would be the case for a temporary dock, but not for a permanent dock system. This created some confusion. The agent followed up on the April 22 email that stated that the proposed dock could not be permitted, pointing out that the policy applies to "permanent docks that are within the channel of a watercourse." The CVCA staff member handling the file at this time was inexperienced, and opted to consult with other CVCA staff in order to address this concern. That staff member informed the agent they were attending a 2-week training course. The agent followed up on May 12 by email. CVCA staff responded on May 13, informing the agent that CVCA staff were consulting with the Municipality of Highlands East to find out if the Municipality permits permanent docks and, if so, what approvals are required. On May 19, CVCA emailed the agent stating that permanent docks require

municipal building permits in addition to a permit from the CVCA. CVCA staff advised that the Municipality should be consulted and building permit applied for, as well as to confirm with the CVCA if a planning application would be required. The applicant then applied for a municipal building permit. It is the CVCA's understanding that the applicant proceeded to apply for a building permit with the Municipality of Highlands East and completed technical work (engineering) that was required by the Municipality. It is the CVCA's understanding that a building permit could not have been issued by the Municipality, as the approval from the CVCA is considered applicable law under Ontario's Building Code Act.

The applicant's report includes documentation of this sequence of events and correspondence.

## **Application Process - Discussion**

It was the intention of CVCA staff that the applicant consult with the Municipality to find out if, conceptually, permanent docks would be permitted under Municipal bylaws. Rather than looking to other approval processes, CVCA staff should have maintained focus on the CVCA's Policies, especially when CVCA Policy clearly states that new permanent docks are not permitted. This error in procedure is recognized. It is understandable if the applicant feels they have invested unnecessary time and resources into the Municipal building approval process. Unfortunately, when dealing with hundreds of development-related files each year, it is inherent that some errors will be made. It is imperative to note that CVCA staff errors do not warrant deviation from applying and upholding the tests of the Regulation.

## **Applicability of the Conservation Authorities Act, Ontario Regulation 159/06 and the Crowe Valley Conservation Authority's Watershed Planning and Regulations Policy Manual**

Hazard land management was delegated by the Province to the CVCA through the Conservation Authorities Act and the establishment of Ontario Regulation 159/06. The CVCA's Watershed Planning and Regulations Policies have been developed to guide the exercise of the CVCA's powers under Ontario Regulation 159/06.

The overarching objective of the Regulation is to ensure that development does not negatively impact the control of flooding, erosion, dynamic beaches, pollution or the conservation of land.

### **Ontario Regulation 159/06**

The subject property is within an area regulated by the CVCA due to the river valley associated with Paudash Lake and proximity to a Provincially Significant Wetland (Central Paudash Lake Wetland). All lakes within the CVCA watershed are considered watercourses and have a river or stream valley associated with them. Section 2 (1) (a) (iii) (A) of the Regulation states:

#### **Development prohibited**

2. (1) Subject to section 3, no person shall undertake development or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,

**(a) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:**

- (i) where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of bank, plus 15 metres, to a similar point on the opposite side,**
- (ii) where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope, or if the toe of the slope is unstable, from the predicted location of the toe of the slope as a result of stream erosion over a projected 100-year period, plus 15m, to a similar point on the opposite side,**
- (iii) where the river or stream valley is not apparent, the valley extends the greater of,**

- (A) the distance from a point outside the edge of the maximum extent of the flood plain under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side, and
- (B) the distance from the predicted meander belt of a watercourse, expanded as required to convey the flood flows under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side;
- (b) hazardous lands;
- (c) wetlands; or
- (d) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size.

**Permission to develop**

- 3. (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.

**Alterations prohibited**

- 5. Subject to section 6, no person shall straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland.

**Permission to alter**

- 6. (1) The Authority may grant permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or to change or interfere with a wetland.

**Applicable CVCA Watershed Planning and Regulations Policies**

The CVCA’s Watershed Planning and Regulations Policies are intended to provide CVCA staff with guidance and direction for exercising powers under Ontario Regulation 159/06 (pursuant to the Conservation Authorities Act). When reviewing development applications, the Authority must have regard for its objectives of preventing or minimizing risks to life and property as a result of natural hazards.

**Construction of a New Permanent Dock**

The construction of a new permanent dock is not permitted in accordance with CVCA Policy 6.4.1.8, which simply states:

*New in-water bathouses (for upland bathouses see Policy 5.3.5), structures and permanent docks that are within the channel of a watercourse will be not be permitted.*

**CVCA Policy Discussion – Permanent Docks**

CVCA Policy 6.4.1.8 (above) states that new permanent docks are not permitted. It should be clarified that CVCA staff recognize that there is an existing temporary dock on the property. CVCA policies allow for exiting permanent docks to be repaired or replaced, provided that this occurs in the same location and there is no increase in size. Constructing a permanent dock in place of an existing temporary dock is not considered like-for-like replacement, and is not supported by the CVCA’s Policies.

**General CVCA Policies**

Below are general administrative policies and policies for development near/in watercourses that every application must be tested against. Sections that are not relevant to this application have been omitted.

### 3.8 General Regulation Policies

#### 3.8.1

*It is the policy of the CVCA that development, interference or alteration will not be permitted within a regulated area, except in accordance with the policies contained within this document. In the event of a conflict between the policies applicable to the development, interference or alteration, the most restrictive policy shall apply.*

#### 3.8.2

*It is the policy of the CVCA that notwithstanding Policy 3.8.1, the CVCA's Board of Directors may grant permission for development, interference and/or alteration where the application provides evidence acceptable to the Board of Directors that documents that the development and/or activity will have no adverse effect on the control of flooding, erosion, pollution or the conservation of land with respect to river or stream valleys, hazardous land, wetland and areas of interference, or result in unacceptable interference with a watercourse or wetland.*

#### 3.8.3

*It is the policy of the CVCA that development, interference or alteration within a regulated area may be permitted where it can be demonstrated to the satisfaction of CVCA, through appropriate technical reports, assessments, site plans and/ or other documents as required by CVCA, that:*

- *there is no feasible alternative location for development outside the hazard;*
- *the risk to public safety is not increased;*
- *susceptibility to natural hazards is not increased and no new hazards are created (e.g. there will be no impacts on adjacent properties with respect to natural hazards);*
- *there are no adverse hydraulic or fluvial impacts on rivers, creeks, streams, or watercourses;*
- *negative or adverse hydrological or ecological impacts on natural features and functions, including wetlands, are avoided and mitigated as demonstrated by a qualified professional;*
- *intrusions on natural features, areas and systems contributing to the conservation of land, including areas providing ecological functions and hydrologic functions, are avoided or mitigated as demonstrated by qualified professional;*
- *access for emergency works and maintenance of flood or erosion control works is available;*
- *pollution, sedimentation and erosion during construction and post-construction is minimized using best management practices including site, landscape, infrastructure and/or facility design (whichever is applicable based on the scale and scope of the project), construction controls, and appropriate remedial measures;*
- *the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected during and post development, interference or alteration;*
- *proposed development is constructed, repaired and/or maintained in accordance with accepted engineering principles and approved engineering standards to the satisfaction of CVCA, whichever is applicable based on the structural scale and scope, and the purpose of the project.*

### Consistency with Ontario Regulation 159/06 and CVCA's Watershed Planning and Regulations Policies

The CVCA Watershed Advisory Board is tasked with determining whether the proposed development is consistent with O. Reg. 159/06 and the CVCA's Watershed Planning and Regulations Policies. Proposed development is not to have potential negative impacts on the control of flooding, erosion, pollution or the conservation of land. The onus is with the applicant to demonstrate that there will not be any negative impacts.

Changes to flood storage capacity and other negative impacts on the control of flooding caused by the proposed permanent dock are likely minimal and practically not measurable. However, Conservation Authorities operate on a watershed-based scale and a long-term planning horizon of 100 years. The Watershed Advisory Board must consider the cumulative impacts of development in the floodplain, regardless of the perceived insignificance. The Watershed Advisory Board must consider what effects cumulative development within the floodplain will have in the watershed over time, as well as the precedent that is set in the watershed when this type of development is permitted.

## **Ontario Land Tribunal Decision**

The CVCA is often subject to comparisons with neighbouring Conservation Authorities in terms of various operating procedures. This includes fees, application requirements, permit processing times – the list goes on. Individual Conservation Authorities have their own Planning and Regulations policies, which are approved by the Conservation Authority Board of Directors. This allows for flexibility in developing policies that address and reflect variation in local conditions. Each Conservation Authority has individual Section 28 Regulations, the contents of which are defined under the Conservation Authorities Act. These Regulations, while having some small differences (e.g. presence of Great Lakes shorelines), are virtually identical in terms of practice. All hinge on the tests of the regulation, being that development does not affect the control of flooding, erosion, dynamic beaches, pollution or the conservation of land.

The CVCA Watershed Advisory Board may want to consider decisions recently (2019-2022) made in relation to a similar development proposal in neighbouring Quinte Conservation Authority's jurisdiction. Quinte Conservation Authority's jurisdiction is immediately east of that of Crowe Valley. The application included various projects, including the construction of a permanent pile supported deck and cantilevered dock. The other components of the project satisfied Quinte Conservation's policy requirements, and were approved. The deck and dock system did not meet Quinte Conservation's policy requirements and was recommended by staff for denial. The applicant requested a Hearing with Quinte Conservation's Hearing Committee. The Hearing Committee denied the requested permit. The Notice of the Decision provides,

*THAT, the Committee decision is to support the staff recommendation that the application be denied as the application violates O. Reg. 319/09, and that although the displacement of water is not measurable, there would be cumulative impact for allowing this type of development.*

The applicant then had the right to appeal the decision of the Hearing Committee to the Ontario Land Tribunal (OLT Case No(s). OLT-21-001536). A copy of the Tribunal's decision is attached as **Appendix F**.

The Ontario Land Tribunal dismissed the appeal, stating:

*Based on the evidence and submissions before it, the Tribunal finds that permission to construct the Deck and Dock on the Property would not comply with Ontario Regulation 319/09 and would not be consistent with the Provincial Policy Statement.*

As part of this proceeding, the appellants argued that:

- *Temporary docks have the potential to displace water and that the Conservation Authority allows the installation of temporary docks without permits.*

- *The Conservation Authority does not have a “serious concern” about the displacement of water and that displacement of water is not a valid reason to deny the requested permit.*
- *The professional opinion of an engineer hired by the appellant should be preferred over that of the evidence of Conservation Authority staff.*
- *The Conservation Authority has not provided evidence to support its claim that construction of the Deck and Dock would affect the control of flooding, erosion, dynamic beaches, pollution, and the conservation of land.*

The appellants sought the analysis and opinion of an engineer to support the request for permission. The engineer provided a detailed analysis regarding the impact of the construction of the Deck and Dock on control of flooding, erosion, pollution, dynamic beaches or the conservation of land. The Tribunal’s analysis and findings offered the following statements:

*The question for the Tribunal to determine is whether the construction of the Deck and Dock will affect the control of flooding, erosion, dynamic beaches, pollution, and the conservation of land.*

*Based on the evidence before it, the Tribunal finds that the Appellants have failed to demonstrate that the construction of the Deck and Dock will have no affect on the control of flooding erosion, control of pollution, conservation of land.*

It is imperative to acknowledge that while the proposed development subject of the Ontario Land Tribunal referred to above is for the same type of development subject to this Hearing (permanent dock/deck structure on steel piles), all applications do have their respective differences.

### **CVCA Staff Recommendation**

Based on the information submitted, CVCA staff recommend that the application be denied for the following reasons:

1. The proposed dock would be located within hazardous lands, being the flood hazard associated with Paudash Lake. Therefore, the proposed development has the potential to negatively affect the control of flooding.
2. The proposed dock does not conform to the CVCA’s Watershed Planning and Regulations Policies, specifically:
  - a. CVCA Policies do not allow for new permanent docks.
  - b. The proposed dock does not constitute a replacement of an existing dock, and is therefore considered new development within the floodplain.

### **Staff Recommendation – Discussion**

1. The proposed dock would be located within hazardous lands, being the flood hazard associated with Paudash Lake. Therefore, the proposed development has the potential to negatively affect the control of flooding.

The proposed development would affect the control of flooding due to the displacement of water. When the area of the footings and decking material is calculated, the volume of water displaced is minimal. However, there will be cumulative impacts on the watershed if this type of development is permitted over time. The CVCA must make decisions on a watershed scale and with a long term planning horizon.



2. The proposed dock does not conform to the CVCA’s Watershed Planning and Regulations Policies, specifically:
  - a. CVCA Policies do not allow for new permanent docks.
  - b. The proposed dock does not constitute a replacement of an existing dock, and is therefore considered new development within the floodplain.

CVCA policies encourage development to take place outside of hazardous lands, which includes flooding hazards. There are certain types of development that, by their nature, are located within hazardous areas – docks being a prime example of this. CVCA policies allow for this type of development, including docks, provided that it can meet the requirements specified by CVCA policies. Based on the CVCA’s current policies, new permanent docks are not permitted. The CVCA encourages the installation of temporary docks that can be removed seasonally from the flood hazard. For properties that have existing permanent docks, the CVCA allows for the permanent dock to be replaced or repaired. For example, a deteriorating crib-style dock could be replaced with a steel pile supported dock, provided that the dock remains the same size and is in the same location. An existing temporary dock does not warrant the construction of a permanent dock. If a landowner wishes to expand their dock area, the CVCA’s policies effectively encourage them to shift to a temporary style of dock. A combination of the old permanent dock and new temporary dock would be permitted as well.

## **Summary**

Hazard land management was delegated by the Province to the CVCA through the Conservation Authorities Act and the establishment of Ontario Regulation 159/06. The CVCA’s Watershed Planning and Regulations Policies have been developed to assist CVCA staff with the administration of this Regulation.

CVCA staff recommend that the application to construct a permanent dock be refused, as it does not conform with the CVCA’s Watershed Planning and Regulations Policies and contravenes Ontario Regulation 159/06.

The Watershed Advisory Board must consider the cumulative impacts of development in the floodplain, regardless of the perceived insignificance. The Watershed Advisory Board must consider what effects ongoing development located within the floodplain will have in the watershed over time and implications this may have for future generations.

It is important to note that deviation from the CVCA’s policies begins to set precedence in the watershed – a risk that requires careful consideration.

## **APPENDICES**

A	Ontario Regulation 159/06
B	Conservation Authorities Act Hearing Guidelines
C	Maps of Subject Property
D	CVCA Permit Application #088/22
E	Detailed Design Drawings, R&J Machine
F	Ontario Land Tribunal Decision (OLT-21-001536)

**Appendix A**

**Ontario Regulation 159/06**

**CROWE VALLEY CONSERVATION AUTHORITY: REGULATION OF  
DEVELOPMENT, INTERFERENCE WITH WETLANDS AND ALTERATIONS TO  
SHORELINES AND WATERCOURSES**

**Conservation Authorities Act**  
**Loi sur les offices de protection de la nature**

**ONTARIO REGULATION 159/06**

**CROWE VALLEY CONSERVATION AUTHORITY: REGULATION OF DEVELOPMENT,  
INTERFERENCE WITH WETLANDS AND ALTERATIONS TO SHORELINES AND  
WATERCOURSES**

**Consolidation Period:** From February 8, 2013 to the [e-Laws currency date](#).

Last amendment: 54/13.

Legislative History: 54/13, CTR 12 FE 13 - 1.

*This Regulation is made in English only.*

**Definition**

1. In this Regulation,

“Authority” means the Crowe Valley Conservation Authority. O. Reg. 159/06, s. 1.

**Development prohibited**

2. (1) Subject to section 3, no person shall undertake development or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,

- (a) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:
  - (i) where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of bank, plus 15 metres, to a similar point on the opposite side,
  - (ii) where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope or, if the toe of the slope is unstable, from the predicted location of the toe of the slope as a result of stream erosion over a projected 100-year period, plus 15 metres, to a similar point on the opposite side,
  - (iii) where the river or stream valley is not apparent, the valley extends the greater of,
    - (A) the distance from a point outside the edge of the maximum extent of the flood plain under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side, and
    - (B) the distance from the predicted meander belt of a watercourse, expanded as required to convey the flood flows under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side;
- (b) hazardous lands;
- (c) wetlands; or
- (d) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of wetlands less than 2 hectares in size. O. Reg. 159/06, s. 2 (1); O. Reg. 54/13, s. 1 (1).

(2) All areas within the jurisdiction of the Authority that are described in subsection (1) are delineated as the “Regulation Limit” shown on a series of maps filed at the head office of the Authority under the map title “Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses”. O. Reg. 54/13, s. 1 (2).

(3) If there is a conflict between the description of areas in subsection (1) and the areas as shown on the series of maps referred to in subsection (2), the description of areas in subsection (1) prevails. O. Reg. 54/13, s. 1 (2).

**Permission to develop**

3. (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development. O. Reg. 159/06, s. 3 (1).

(2) The permission of the Authority shall be given in writing, with or without conditions. O. Reg. 159/06, s. 3 (2).

(3) Subject to subsection (4), the Authority's executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for development in or on the areas described in subsection 2 (1). O. Reg. 54/13, s. 2.

(4) A designate under subsection (3) shall not grant a permission for development with a maximum period of validity of more than 24 months. O. Reg. 54/13, s. 2.

**Application for permission**

**4.** A signed application for permission to undertake development shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing the type and location of the proposed development.
2. The proposed use of the buildings and structures following completion of the development.
3. The start and completion dates of the development.
4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after the development.
5. Drainage details before and after the development.
6. A complete description of the type of fill proposed to be placed or dumped.
7. Such other technical studies or plans as the Authority may request. O. Reg. 159/06, s. 4; O. Reg. 54/13, s. 3.

**Alterations prohibited**

**5.** Subject to section 6, no person shall straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or change or interfere in any way with a wetland. O. Reg. 159/06, s. 5.

**Permission to alter**

**6.** (1) The Authority may grant permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or to change or interfere with a wetland. O. Reg. 159/06, s. 6 (1); O. Reg. 54/13, s. 4 (1).

(2) The permission of the Authority shall be given in writing, with or without conditions. O. Reg. 159/06, s. 6 (2).

(3) Subject to subsection (4), the Authority's executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for alteration. O. Reg. 54/13, s. 4 (2).

(4) A designate under subsection (3) shall not grant a permission for alteration with a maximum period of validity of more than 24 months. O. Reg. 54/13, s. 4 (2).

**Application for permission**

**7.** A signed application for permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing plan view and cross-section details of the proposed alteration.
2. A description of the methods to be used in carrying out the alteration.
3. The start and completion dates of the alteration.
4. A statement of the purpose of the alteration.
5. Such other technical studies or plans as the Authority may request. O. Reg. 159/06, s. 7; O. Reg. 54/13, s. 5.

**Cancellation of permission**

**8.** (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met. O. Reg. 159/06, s. 8 (1); O. Reg. 54/13, s. 6 (1).

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled. O. Reg. 159/06, s. 8 (2).

(3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing. O. Reg. 159/06, s. 8 (3); O. Reg. 54/13, s. 6 (2).

**Period of validity of permissions and extensions**

9. (1) The maximum period, including an extension, for which a permission granted under section 3 or 6 may be valid is,

- (a) 24 months, in the case of a permission granted for projects other than projects described in clause (b); and
- (b) 60 months, in the case of a permission granted for,
  - (i) projects that, in the opinion of the Authority or its executive committee, cannot reasonably be completed within 24 months from the day the permission is granted, or
  - (ii) projects that require permits or approvals from other regulatory bodies that, in the opinion of the Authority or its executive committee, cannot reasonably be obtained within 24 months from the day permission is granted. O. Reg. 54/13, s. 7.

(2) The Authority or its executive committee may grant a permission for an initial period that is less than the applicable maximum period specified in subsection (1) if, in the opinion of the Authority or its executive committee, the project can be completed in a period that is less than the maximum period. O. Reg. 54/13, s. 7.

(3) If the Authority or its executive committee grants a permission under subsection (2) for an initial period that is less than the applicable maximum period of validity specified in subsection (1), the Authority or its executive committee may grant an extension of the permission if,

- (a) the holder of the permission submits a written application for an extension to the Authority at least 60 days before the expiry of the permission;
- (b) no extension of the permission has previously been granted; and
- (c) the application sets out the reasons for which an extension is required and, in the opinion of the Authority or its executive committee, demonstrates that circumstances beyond the control of the holder of the permission will prevent completion of the project before the expiry of the permission. O. Reg. 54/13, s. 7.

(4) When granting an extension of a permission under subsection (3), the Authority or its executive committee may grant the extension for the period of time requested by the holder in the application or for such period of time as the Authority or its executive committee deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1). O. Reg. 54/13, s. 7.

(5) For the purposes of this section, the granting of an extension for a different period of time than the period of time requested does not constitute a refusal of an extension. O. Reg. 54/13, s. 7.

(6) The Authority or its executive committee may refuse an extension of a permission if it is of the opinion that the requirements of subsection (3) have not been met. O. Reg. 54/13, s. 7.

(7) Before refusing an extension of a permission, the Authority or its executive committee shall give notice of intent to refuse to the holder of the permission, indicating that the extension will be refused unless,

- (a) the holder requires a hearing, which may be before the Authority or its executive committee, as the Authority directs; and
- (b) at the hearing, the holder satisfies the Authority, or the Authority's executive committee, as the case may be,
  - (i) that the requirements of clauses (3) (a) and (b) have been met, and
  - (ii) that circumstances beyond the control of the holder will prevent completion of the project before the expiry of the permission. O. Reg. 54/13, s. 7.

(8) If the holder of the permission requires a hearing under subsection (7), the Authority or its executive committee shall give the holder at least five days notice of the date of the hearing. O. Reg. 54/13, s. 7.

(9) After holding a hearing under subsection (7), the Authority or its executive committee shall,

- (a) refuse the extension; or
- (b) grant an extension for such period of time as it deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1). O. Reg. 54/13, s. 7.

(10) Subject to subsection (11), one or more employees of the Authority that have been designated by the Authority for the purposes of this section may exercise the powers and duties of the Authority under subsections (2), (3) and (4), but not those under subsections (6), (7), (8) and (9). O. Reg. 54/13, s. 7.

(11) A designate under subsection (10) shall not grant an extension of a permission for any period that would result in the permission having a period of validity greater than 24 months. O. Reg. 54/13, s. 7.

**Appointment of officers**

10. The Authority may appoint officers to enforce this Regulation. O. Reg. 159/06, s. 10.

**Flood event standards**

11. The applicable flood event standards used to determine the maximum susceptibility to flooding of lands or areas within the watersheds in the area of jurisdiction of the Authority are the Hurricane Hazel Flood Event Standard, the 100 year flood level and the Timmins Flood Event Standard described in Schedule 1. O. Reg. 159/06, s. 11.

12. REVOKED: O. Reg. 54/13, s. 8.

**SCHEDULE 1**

1. The Hurricane Hazel Flood Event Standard means a storm that produces over a 48-hour period,
  - (a) in a drainage area of 25 square kilometres or less, rainfall that has the distribution set out in Table 1; or
  - (b) in a drainage area of more than 25 square kilometres, rainfall such that the number of millimetres of rain referred to in each case in Table 1 shall be modified by the percentage amount shown in Column 2 of Table 2 opposite the size of the drainage area set out opposite thereto in Column 1 of Table 2.

**TABLE 1**

73 millimetres of rain in the first 36 hours
6 millimetres of rain in the 37th hour
4 millimetres of rain in the 38th hour
6 millimetres of rain in the 39th hour
13 millimetres of rain in the 40th hour
17 millimetres of rain in the 41st hour
13 millimetres of rain in the 42nd hour
23 millimetres of rain in the 43rd hour
13 millimetres of rain in the 44th hour
13 millimetres of rain in the 45th hour
53 millimetres of rain in the 46th hour
38 millimetres of rain in the 47th hour
13 millimetres of rain in the 48th hour

**TABLE 2**

Column 1	Column 2
Drainage Area (square kilometres)	Percentage
26 to 45 both inclusive	99.2
46 to 65 both inclusive	98.2
66 to 90 both inclusive	97.1
91 to 115 both inclusive	96.3
116 to 140 both inclusive	95.4
141 to 165 both inclusive	94.8
166 to 195 both inclusive	94.2
196 to 220 both inclusive	93.5
221 to 245 both inclusive	92.7
246 to 270 both inclusive	92.0
271 to 450 both inclusive	89.4
451 to 575 both inclusive	86.7
576 to 700 both inclusive	84.0
701 to 850 both inclusive	82.4
851 to 1000 both inclusive	80.8
1001 to 1200 both inclusive	79.3
1201 to 1500 both inclusive	76.6
1501 to 1700 both inclusive	74.4

1701 to 2000 both inclusive	73.3
2001 to 2200 both inclusive	71.7
2201 to 2500 both inclusive	70.2
2501 to 2700 both inclusive	69.0
2701 to 4500 both inclusive	64.4
4501 to 6000 both inclusive	61.4
6001 to 7000 both inclusive	58.9
7001 to 8000 both inclusive	57.4

2. The 100 year flood level means the peak instantaneous still water level plus an allowance for wave uprush and other water-related hazards for Lake Ontario that has a probability of occurrence of one per cent during any given year.

3. The Timmins Flood Event Standard means a storm that produces over a 12-hour period,

- (a) in a drainage area of 25 square kilometres or less, rainfall that has the distribution set out in Table 3; or
- (b) in a drainage area of more than 25 square kilometres, rainfall such that the number of millimetres of rain referred to in each case in Table 3 shall be modified by the percentage amount shown in Column 2 of Table 4 opposite the size of the drainage area set out opposite thereto in Column 1 of Table 4.

TABLE 3

15 millimetres of rain in the first hour
20 millimetres of rain in the second hour
10 millimetres of rain in the third hour
3 millimetres of rain in the fourth hour
5 millimetres of rain in the fifth hour
20 millimetres of rain in the sixth hour
43 millimetres of rain in the seventh hour
20 millimetres of rain in the eighth hour
23 millimetres of rain in the ninth hour
13 millimetres of rain in the tenth hour
13 millimetres of rain in the eleventh hour
8 millimetres of rain in the twelfth hour

TABLE 4

Column 1	Column 2
Drainage Area (Square Kilometres)	Percentage
26 to 50 both inclusive	97
51 to 75 both inclusive	94
76 to 100 both inclusive	90
101 to 150 both inclusive	87
151 to 200 both inclusive	84
201 to 250 both inclusive	82
251 to 375 both inclusive	79
376 to 500 both inclusive	76
501 to 750 both inclusive	74
751 to 1000 both inclusive	70
1001 to 1250 both inclusive	68
1251 to 1500 both inclusive	66
1501 to 1800 both inclusive	65
1801 to 2100 both inclusive	64
2101 to 2300 both inclusive	63
2301 to 2600 both inclusive	62
2601 to 3900 both inclusive	58
3901 to 5200 both inclusive	56
5201 to 6500 both inclusive	53
6501 to 8000 both inclusive	50

**Appendix B**

**Hearing Guidelines**

**Section 28 (12), (13), (14)**

**Conservation Authorities Act**



## **1.0 PURPOSE OF HEARING GUIDELINES:**

The purpose of the Hearing Guidelines is to reflect the changes to the 1998 Conservation Authorities Act. The Act requires that the applicant be party to a hearing by the local Conservation Authority Board, or Executive Committee (sitting as a Hearing Board) as the case may be, for an application to be refused or approved with contentious conditions. Further, a permit may be refused if in the opinion of the Authority the proposal adversely affects the control of flooding, pollution or conservation of land, and additional erosion and dynamic beaches. The Hearing Board is empowered by law to make a decision, governed by the Statutory Powers Procedures Act. It is the purpose of the Hearing Board to evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and to decide whether the application will be approved with or without conditions or refused.

These guidelines have been prepared as an update to the October 1992 hearing guidelines and are intended to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) of the Conservation Authorities Act. Similar to the 1992 guidelines, it is hoped that the guidelines will promote the necessary consistency across the Province and ensure that hearings meet the legal requirements of the Statutory Powers Procedures Act without being unduly legalistic or intimidating to the participants.

## **2.0 PREHEARING PROCEDURES**

### **2.1 Apprehension of Bias**

In considering the application, the Hearing Board is acting as a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.

- (a) No member of the Authority taking part in the hearing should be involved, either through participation in committee or intervention on behalf of the applicant or other interested parties with the matter, prior to the hearing. Otherwise, there is a danger of an apprehension of bias which could jeopardize the hearing.
- (b) If material relating to the merits of an application that is the subject of a hearing is distributed to Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material.
- (c) In instances where the Authority (or Executive Committee) requires a hearing to help it reach a determination as to whether to give permission with or without conditions or refuse a permit application, a final decision shall not be made until such time as a hearing is held. The applicant will be given an opportunity to attend the hearing before a

decision is made; however, the applicant does not have to be present for a decision to be made.

Individual Conservation Authorities shall develop a document outlining their own practices and procedures relating to the review and reporting of Section 28 applications, including the role of staff, the applicant and the Authority or Executive Committee as well as, the procedures for the hearing itself. Such policy and procedures manual shall be available to the members of the public upon request. These procedures shall have regard for the above information and should be approved by the Conservation Authority Board of Directors.

## **2.2 Application**

The right to a hearing is required where staff is recommending refusal of an application or where there is some indication that the Authority or Executive Committee may not follow staff's recommendation to approve a permit or the applicant objects to the conditions of approval. The applicant is entitled to reasonable notice of the hearing pursuant to the Statutory Powers Procedures Act.

## **2.3 Notice of Hearing**

The Notice of Hearing shall be sent to the applicant within sufficient time to allow the applicant to prepare for the hearing. To ensure that reasonable notice is given, it is recommended that prior to sending the Notice of Hearing, the applicant be consulted to determine an agreeable date and time based on the local Conservation Authority's regular meeting schedule.

The Notice of Hearing must contain the following:

- (a) Reference to the applicable legislation under which the hearing is to be held (i.e., the Conservation Authorities Act).
- (b) The time, place and the purpose of the hearing.
- (c) Particulars to identify the applicant, property and the nature of the application which are the subject of the hearing.

Note: If the applicant is not the landowner but the prospective owner, the applicant must have written authorization from the registered landowner.

- (d) The reasons for the proposed refusal or conditions of approval shall be specifically stated. This should contain sufficient detail to enable the applicant to understand the issues so he or she can be adequately prepared for the hearing.

It is sufficient to reference in the Notice of Hearing that the recommendation for refusal or conditions of approval is based on the reasons outlined in previous correspondence or a hearing report that will follow.

- (e) A statement notifying the applicant that the hearing may proceed in the applicant's absence and that the applicant will not be entitled to any further notice of the proceedings.

Except in extreme circumstances, it is recommended that the hearing not proceed in the absence of the applicant.

- (f) Reminder that the applicant is entitled to be represented at the hearing by counsel, if desired.

It is recommended that the Notice of Hearing be directed to the applicant and/or landowner by registered mail. Please refer to Appendix A for an example Notice of Hearing.

## **2.4 Presubmission of Reports**

If it is the practice of the local Conservation Authority to submit reports to the Board members in advance of the hearing (i.e., inclusion on an Authority/Executive Committee agenda), the applicant shall be provided with the same opportunity. The applicant shall be given two weeks to prepare a report once the reasons for the staff recommendations have been received. Subsequently, this may affect the timing and scheduling of the staff hearing reports.

## **2.5 Hearing Information**

Prior to the hearing, the applicant shall be advised of the local Conservation Authority's hearing procedures upon request.

## **3.0 HEARING**

### **3.1 Public Hearing**

Pursuant to the Statutory Powers Procedure Act, hearings are required to be held in public. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that intimate financial, personal or other matters would be disclosed at hearings.

### **3.2 Hearing Participants**

The Conservation Authorities Act does not provide for third party status at the local hearing. While others may be advised of the local hearing, any information that they provide should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff.

### **3.3 Attendance of Hearing Board Members**

In accordance with case law relating to the conduct of hearings, those members of the Authority who will decide whether to grant or refuse the application must be present during the full course of the hearing. If it is necessary for a member to leave, the hearing must be adjourned and resumed when either the member returns or if the hearing proceeds, even in the event of an adjournment, only those members who were present after the member left can sit to the conclusion of the hearing.

### **3.4 Adjournments**

The Board may adjourn a hearing on its own motion or that of the applicant or Authority staff where it is satisfied that an adjournment is necessary for an adequate hearing to be held.

Any adjournments form part of the hearing record.

### **3.5 Orders and Directions**

The Authority is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes. A hearing procedures example has been included as Appendix B.

### **3.6 Information Presented at Hearings**

- (a) The Statutory Powers Procedure Act, requires that a witness be informed of his right to object pursuant to the Canada Evidence Act. The Canada Evidence Act indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating. Further, answers provided during the hearing are not admissible against the witness in any criminal trial or proceeding. This information should be provided to the applicant as part of the Notice of Hearing.
- (b) It is the decision of the hearing members as to whether information is presented under oath or affirmation. It is not a legal requirement. The applicant must be informed of the above, prior to or at the start of the hearing.
- (c) The Board may authorize receiving a copy rather than the original document. However, the Board can request certified copies of the document if required.
- (d) Privileged information, such as solicitor/client correspondence, cannot be heard. Information that is not directly within the knowledge of the speaker (hearsay), if relevant to the issues of the hearing, can be heard.
- (e) The Board may take into account matters of common knowledge such as geographic or historic facts, times measures, weights, etc or generally recognized scientific or technical facts, information or opinions within its specialized knowledge without hearing specific information to establish their truth.

### **3.7 Conduct of Hearing**

#### **3.7.1 Record of Attending Hearing Board Members**

A record shall be made of the members of the Hearing Board.

#### **3.7.2 Opening Remarks**

The Chairman shall convene the hearing with opening remarks which generally; identify the applicant, the nature of the application, and the property location; outline the hearing

procedures; and advise on requirements of the Canada Evidence Act. Please reference Appendix C for the Opening Remarks model.

### **3.7.3 Presentation of Authority Staff Information**

Staff of the Authority presents the reasons supporting the recommendation for the refusal or conditions of approval of the application. Any reports, documents or plans that form part of the presentation shall be properly indexed and received.

Staff of the Authority should not submit new information at the hearing as the applicant will not have had time to review and provide a professional opinion to the Hearing Board.

Consideration should be given to the designation of one staff member or legal counsel who coordinates the presentation of information on behalf of Authority staff and who asks questions on behalf of Authority staff.

### **3.7.4 Presentation of Applicant Information**

The applicant has the opportunity to present information at the conclusion of the Authority staff presentation. Any reports, documents or plans which form part of the submission should be properly indexed and received.

The applicant shall present information as it applies to the permit application in question. For instance, does the requested activity affect the control of flooding, erosion, dynamic beach or conservation of land or pollution. The hearing does not address the merits of the activity or appropriateness of such a use in terms of planning.

- The applicant may be represented by legal counsel or agent, if desired
- The applicant may present information to the Board and/or have invited advisors to present information to the Board
- The applicant(s) presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist etc.

The applicant should not submit new information at the hearing as the Staff of the Authority will not have had time to review and provide a professional opinion to the Hearing Board.

### **3.7.5 Questions**

Members of the Hearing Board may direct questions to each speaker as the information is being heard. The applicant and /or agent can make any comments or questions on the staff report.

Pursuant to the Statutory Powers Procedure Act, the Board can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. Please note that the courts have been particularly sensitive to the issue of limiting questions and there is a tendency to allow limiting of questions only where it has clearly gone beyond reasonable or proper bounds.

### **3.7.6 Deliberation**

After all the information is presented, the Board may adjourn the hearing and retire in private to confer. The Board may reconvene on the same date or at some later date to advise of the Board's decision. The Board members shall not discuss the hearing with others prior to the decision of the Board being finalized.

## **4.0. DECISION**

The applicant must receive written notice of the decision. The applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision to the Minister of Natural Resources.

It is important that the hearing participants have a clear understanding of why the application was refused or approved. The Board shall itemize and record information of particular significance which led to their decision.

### **4.1 Notice of Decision**

The decision notice should include the following information:

- (a) The identification of the applicant, property and the nature of the application that was the subject of the hearing.
- (b) The decision to refuse or approve the application. A copy of the Hearing Board resolution should be attached.

It is recommended that the written Notice of Decision be forwarded to the applicant by registered mail. A sample Notice of Decision and cover letter has been included as Appendix D.

### **4.2 Adoption**

A resolution advising of the Board's decision and particulars of the decision should be adopted.

## **5.0 RECORD**

The Authority shall compile a record of the hearing. In the event of an appeal, a copy of the record should be forwarded to the Minister of Natural Resources/Mining and Lands Commissioner. The record must include the following:

- (a) The application for the permit.
- (b) The Notice of Hearing.
- (c) Any orders made by the Board (e.g., for adjournments).

- (d) All information received by the Board.
- (e) The minutes of the meeting made at the hearing.
- (f) The decision and reasons for decision of the Board.
- (g) The Notice of Decision sent to the applicant

## Appendix C

### Maps

<b>MAP 1</b>	<b>Map of property location</b>
<b>MAP 2</b>	<b>Map of proposed dock location</b>

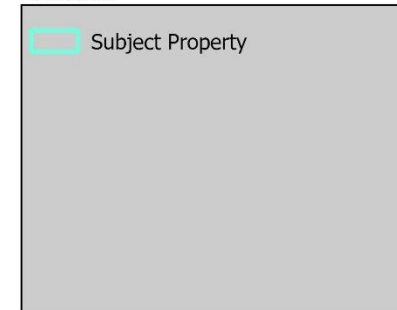


**FERGUSON, Kim**  
**1025 Culvert Drive, Highlands East (Paudash Lake)**  
**Part Lot 19, Concession 8**  
**ARN: 4601-102-000-02900**

**CROWE VALLEY CONSERVATION AUTHORITY**  
**Permit #088/22**  
**Proposed permanent dock**



**LEGEND**



**8 November 2022**

Produced by Crowe Valley Conservation Authority with data supplied under license by Ontario Geospatial Data Exchange and local County data. For demonstrative purposes only - not to be used as an official source of data.

0 50 100 200 Meters

0 250 500 1,000 Feet






**FERGUSON, Kim**  
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**ARN: 4601-102-000-02900**

**CROWE VALLEY CONSERVATION AUTHORITY**  
**Permit #088/22**  
**Proposed permanent dock**



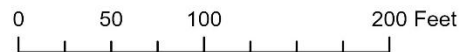
**LEGEND**

-  Dock Location (approx.)
-  Subject Property
-  Provincially Significant Wetlands



**8 November 2022**

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**Appendix D**

**CVCA Permit Application**

**File no. 088/22**



088/22.  
Apr-19/22.

Date Received

## PERMIT APPLICATION FORM

FOR A DEVELOPMENT, INTERFERENCE WITH WETLANDS AND ALTERATIONS TO SHORELINES AND WATERCOURSES PERMIT  
(CONSERVATION AUTHORITIES ACT – ONTARIO REG. 159/06)

**Please provide the completed Permit Application Form to [info@crowevalley.com](mailto:info@crowevalley.com)**

Contact Information (please print clearly)		
Property Owner's Name(s): Kim Ferguson		
Mailing Address (Street, P.O. Box) 118 Wineve Ave.	City Bancroft	Postal Code M4E 2TE
Telephone: Home	Work	Mobile 416-407-2711
Email clinsight@aol.com		
Agent's Name(s): Joan Phillips <span style="float: right; font-size: small;">*property owner's letter of authorization or signature to be attached</span>		
Mailing Address (Street, P.O. Box) 33 McAllister Road	City Bancroft	Postal Code KOL 1C0
Telephone: Home	Work	Mobile 416-576-0166
Email joan.4133.phillips@gmail.com		

Is the Owner aware of this application?     Yes     No - Please explain: \_\_\_\_\_

Have you contacted the municipality to determine if a Planning Act application is applicable?     Yes     No

Is a Planning Act application (minor variance, zoning by-law amendment) required for this development?     Yes     No

Location of Proposed Works (please ensure a map and driving directions are attached)		
Lot 19	Concession 8	Municipality Highlands East
Municipal Street Address 1025 Culvert Dr., Cardiff		
Assessment Roll Number 46-01-102-000-02900-0000	Watercourse/Waterbody Paudash Lake	
Existing Land Use (vacant, residential, etc.) Residential / Cottage	Proposed Land Use Residential / Cottage	

**This application must be accompanied by TWO COPIES of a detailed site plan and payment of a processing fee as determined by the Conservation Authority. The site plan MUST include the following information:**

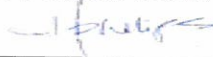
1. General location of property in relation to roads, etc.
2. Location and dimensions of all existing structures on property and a survey plan with lot dimensions.
3. Location of any waterway, open water, wetland, steep slope on or near the property and any drainage features (ditches/culverts).
4. Intended location and dimensions of fill, construction, or waterway alteration proposed.
5. Cross-section of proposal showing existing and final grade with elevations from the current water level of any nearby waterway, and elevations of the lowest structure opening if applicable.

Description of Works (please check all that apply)	
Construction of a Structure <input checked="" type="checkbox"/>	Interference with a Wetland <input type="checkbox"/>
Alter, Add to or Renovate a Structure <input type="checkbox"/>	Pond Construction, cleanout or repair <input type="checkbox"/>
Install a Septic System <i>(please indicate type and volume of fill below)</i> <input type="checkbox"/>	Watercourse Crossing (culvert, bridge) <input type="checkbox"/>
Place or Remove Fill Material <i>(please indicate type and volume of fill below)</i> <input type="checkbox"/>	Shoreline Protection <i>(please indicate length of shoreline affected below)</i> <input type="checkbox"/>
Type and Volume of Fill (m <sup>3</sup> )	Length of Shoreline Affected (m) <b>41'</b>
Other <b>Construction of a new permanent dock</b>	
<b>What is the purpose of the work?</b> Replace existing floating docks with new permanent steel pile driven dock (u-shape)	
Proposed Start Date: Mid July 2022	Completion Date: <b>Early Aug 2022</b>

I/We the undersigned hereby certify to the best of my/our knowledge and belief that all of the above-noted, attached and/or supporting documentation and information is correct and true. I/we further solemnly declare that I/we have read and fully understand the contents of this application and specifically the terms and conditions on the following page, and the declaration written below.

**By signing this application, consent is given to the Crowe Valley Conservation Authority, its employees and authorized representatives to access the property for the purposes of obtaining information and monitoring any approved works pursuant to Section 28(20) of the Conservation Authorities Act.**

I, (please print name) Joan Phillips declare that the above information is correct to the best of my knowledge and I agree to abide by Ontario Regulation 159/06.

Signature:  Date: April 18, 2022

*NOTE: Signature or Written Authorization of Landowner is Mandatory. Landowner authorization form follows this page.*

I am the:  Owner  Agent  Contractor  Other: \_\_\_\_\_

The information on this form is being collected, and will be used, for the purposes of administering a Regulation made pursuant to Section 28 of the Conservation Authorities Act, R.S.O. 1990 C27.

**NOTE:** Further information and studies may be required by the Crowe Valley Conservation Authority (CVCA) in order to process this file, the cost of which will be borne by the applicant or their agent. This information may include details related to wetlands, floodplains, hydraulics, slope stability or stream systems. Once completed, all studies become the property of the CVCA and the information may be used by the CVCA, its member municipalities and partners. In order for members of the public to view any studies, plans and reports related to your permit, a formal request under the **Municipal Freedom of Information Protection and Privacy Act**, RSO 1990, c.M.56, is required. Access is subject to statutory exemptions. The same is true should you wish to access any studies, plans and reports pertaining to other's permits. Insufficient information may delay the processing of your application. This application does not relieve the applicant of the obligation to secure any other necessary approvals. Fees are subject to change without notice.

## Landowner Authorization

If this Application of Permit is to be submitted by a solicitor/ contractor/ agent on behalf of the owner(s), this Landowner Authorization must be completed and signed by the owner(s). If the owner is a corporation acting without agent or solicitor, the application must be signed by an officer of the corporation and the corporation's seal (if any) must be affixed.

### NOTE TO OWNER(S)

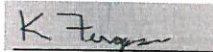
Please note that the Crowe Valley Conservation Authority staff reserve the right to discuss any or all aspects of the permitting process with the property owner.

If the Application of Permit is to be prepared by a solicitor/ contractor/ agent, authorization should not be given until the Application of Permit and its attachments have been examined and approved by you the owner(s). All submissions are the responsibility of the owner(s).

I/ We Kim Ferguson  
*Print full name of owner*

Hereby Authorize Joan Phillips  
*Print full name of Solicitor/ Contractor/ Agent*

To submit the enclosed Application of Permit to the Crowe Valley Conservation Authority and to provide any further information or material required by Authority Staff relevant to the Application of Permit for the purpose of obtaining a Permit to fill, construct or alter a watercourse in accordance with the requirements of the Ontario Regulations.

Signature of Owner(s)  Date April 18, 2022

Signature of Solicitor/ Contractor/ Agent  Date April 18, 2022

## TERMS AND CONDITIONS

The Applicant, by acceptance and in consideration of the issuance of this Application of Permit, agrees to the following conditions:

1. The Owner and Applicant agrees:
  - a. to indemnify and save harmless, the CVCA and its officers, employees, or agents, from and against all damage, loss, costs, claims, demands, actions and proceedings, arising out of or resulting from any act or omissions of the Owner and Applicant or any of his/her agents, employees or contractors relating to any of the particulars, terms or conditions of this Application of Permit;
  - b. that this Application of Permit shall not release the Owner and Applicant from any legal liability or obligation and remains in force subject to all limitations, requirements and liabilities imposed by law;
  - c. that at all complaints arising from the proposed works authorized under this Application of Permit shall be reported immediately by the Owner and Applicant to the CVCA. The Owner and Applicant shall indicate any action which has taken place or is planned to be take, with regard to each complaint.
2. This Application of Permit shall not be assigned or assumed by any subsequent purchaser, transferee or grantee.
3. This Application of Permit does not absolve the Applicant of the responsibility of obtaining necessary permission from applicable federal, provincial or local agencies.
4. Should default be made by the Owner and Applicant in compliance with, or satisfaction of, the enumerated conditions and or submitted application, the CVCA may enter upon the property with respect to which conditional approval is granted and cause said conditions to be satisfied if necessary, the expense of which will be the sole responsibility of the Owner and Applicant.
5. The work shall be carried out as per the approved plans and specifications submitted in support of the application and as amended by the approval of this permit.
6. The Owner and Applicant agree to maintain all existing drainage patterns, and not to obstruct external drainage from other adjacent private or municipal lands.
7. The permit granted under this regulation is valid for TWO years from the date of issue and it is the responsibility of the Owner and Applicant to ensure that a valid permit is in effect at the time of works occurring.
8. The Owner and Applicant may appeal any or all of the stated conditions of the permit to the Board of the Conservation Authority.

**PLEASE NOTE THAT ONLY THE FIRST THREE (3) PAGES OF THIS PACKAGE NEED TO BE RETURNED ALONG WITH SUPPORTING DOCUMENTATION. PLEASE DO NOT RETURN THE FOLLOWING PAGES WITH YOUR APPLICATION.**

## Info

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**From:** Marunde, Alexander (NDMNRF) <Alexander.Marunde@ontario.ca>  
**Sent:** March 22, 2022 8:43 AM  
**To:** Joan Phillips  
**Subject:** Re: Client's New Dock - Paudash Lake - Kim Ferguson Project

Hello Joan,

Thank you for reaching out with your question. Some activities may not require a work permit under the Public Lands Act. Please review the following:

*Activities that do not require a work permit but may require online registration:*

- *undertake minor road maintenance (defined below) on public land*
- *place a registered ice fishing hut on the ice*
- *install a water line, service cable or heat loop for private residential use*
- *remove a dock or boat house that does not involve dredging*
- *construct or place structures that are in physical contact with 15 square meters or less of the shore lands fronting your property (e.g. docks, single-storey boathouses)*

Based on the proposed works that you have described as long as you do not exceed physical contact with 15 square meters of shore lands fronting the property, then you should not require a work permit.

Regards,

Alexander

Alexander Marunde  
Integrated Resource Management Specialist Intern  
Peterborough & Bancroft District  
Ministry of Northern Development, Mines, Natural Resources and Forestry  
Mobile: (613) 202-2185  
Email: [Alexander.Marunde@ontario.ca](mailto:Alexander.Marunde@ontario.ca)



*As part of providing [accessible customer service](#), please let us know if you have any accommodation needs or require communication supports or alternate formats.*

---

**From:** Joan Phillips <joan.4133.phillips@gmail.com>  
**Sent:** Thursday, March 17, 2022 12:57 PM  
**To:** Marunde, Alexander (NDMNRF) <Alexander.Marunde@ontario.ca>  
**Subject:** Client's New Dock - Paudash Lake - Kim Ferguson Project

**CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.**

Hi Alexander,

Hope all is well. Alex I am working on behalf of my client (Kim Ferguson) who owns a cottage property on Paudash Lake in Highland East. The address is 1025 Culvert Dr., Cardiff, ON, CON 8 PT LOT 19 PLAN 456 LOT 5.

Currently they have two older floating docks that they take in and out of the water during the summer and winter seasons. They are planning to install a permanent pile driven steel dock - 3 sections (8' x 20', 12' x 20' & 4' x 25') above high water mark, **these permanent docks will have a very minimal footprint below the high-water mark of approximately 12 steel piles x.50 sq.ft. each = 6 sqft and/or .557 square metres.** In review of projects requiring a work permit from MNRF, my understanding is this project would not require as such. If you could confirm I would appreciate it.

I will also be making an application to Fisheries & Oceans and eventually Crowe Valley Conservation and Highlands East for building permits required.

If you could confirm your receipt and my understanding of no additional requirements from MNRF, I would appreciate it. Thanks so much Alex!

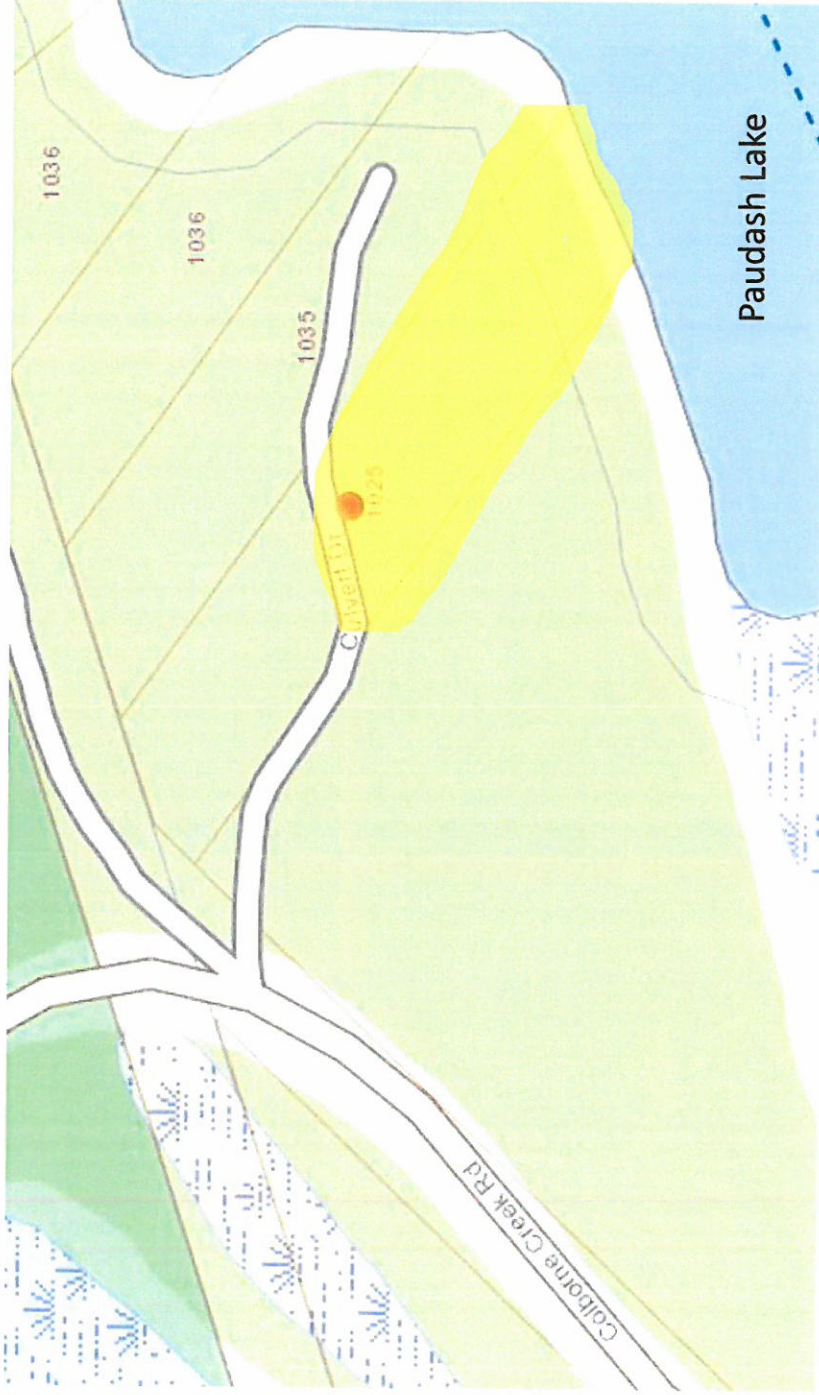
Regards,

Joan

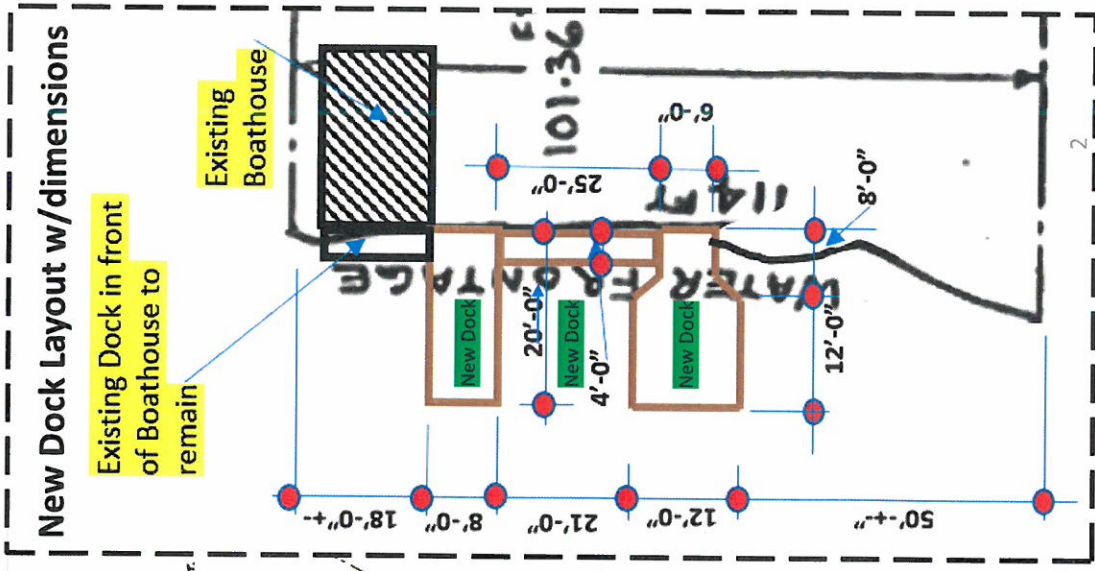
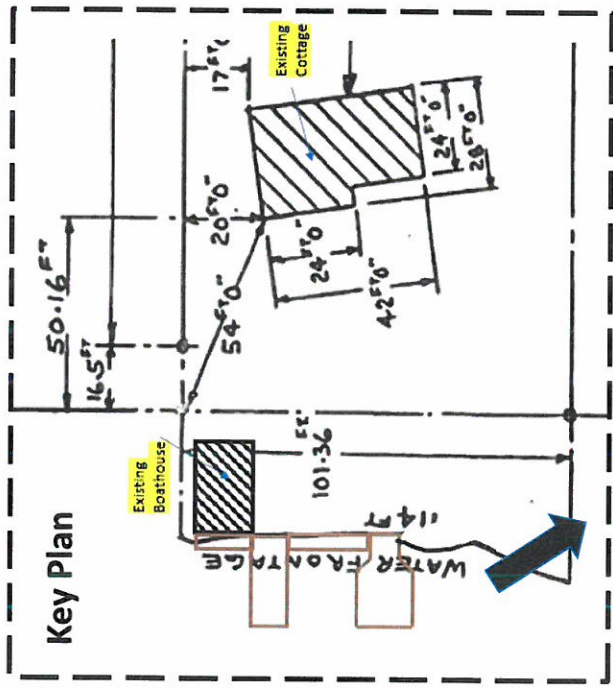
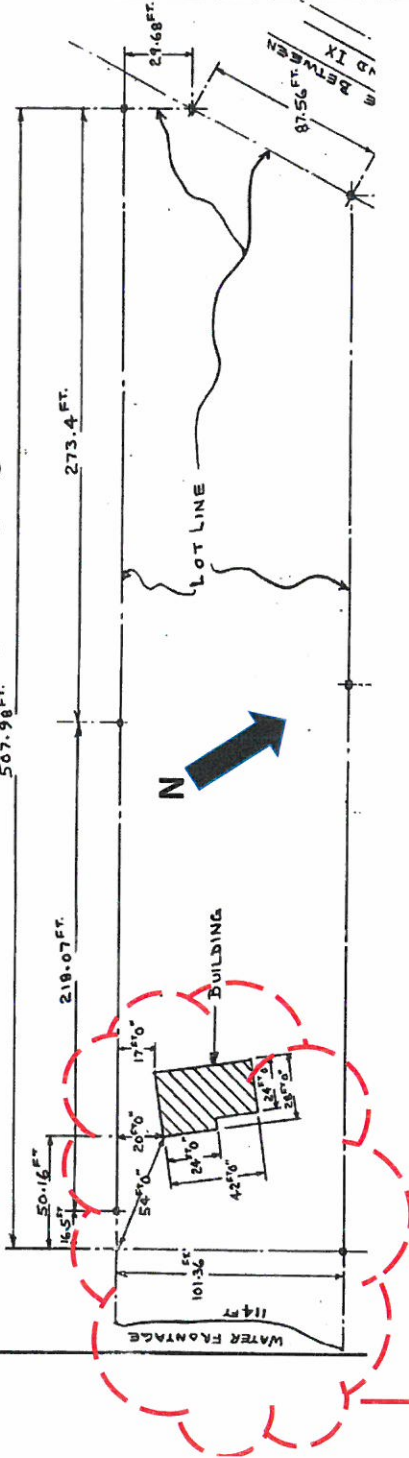
Joan Phillips  
Project Manager/Consultant  
416-576-0166



**Kim Ferguson - Map Location of Lot, 1025 Culvert Drive, Cardiff, Highlands East - Paudash Lake**



# Kim Ferguson Site Plan – 1025 Culvert Drive, Cardiff, Highlands East - Paudash Lake



**New Docks:**  
 Note: All new docks are permanent steel pile driven dock with wood decking

Key Plan

New Dock Layout w/ dimensions

Existing Dock in front of Boathouse to remain

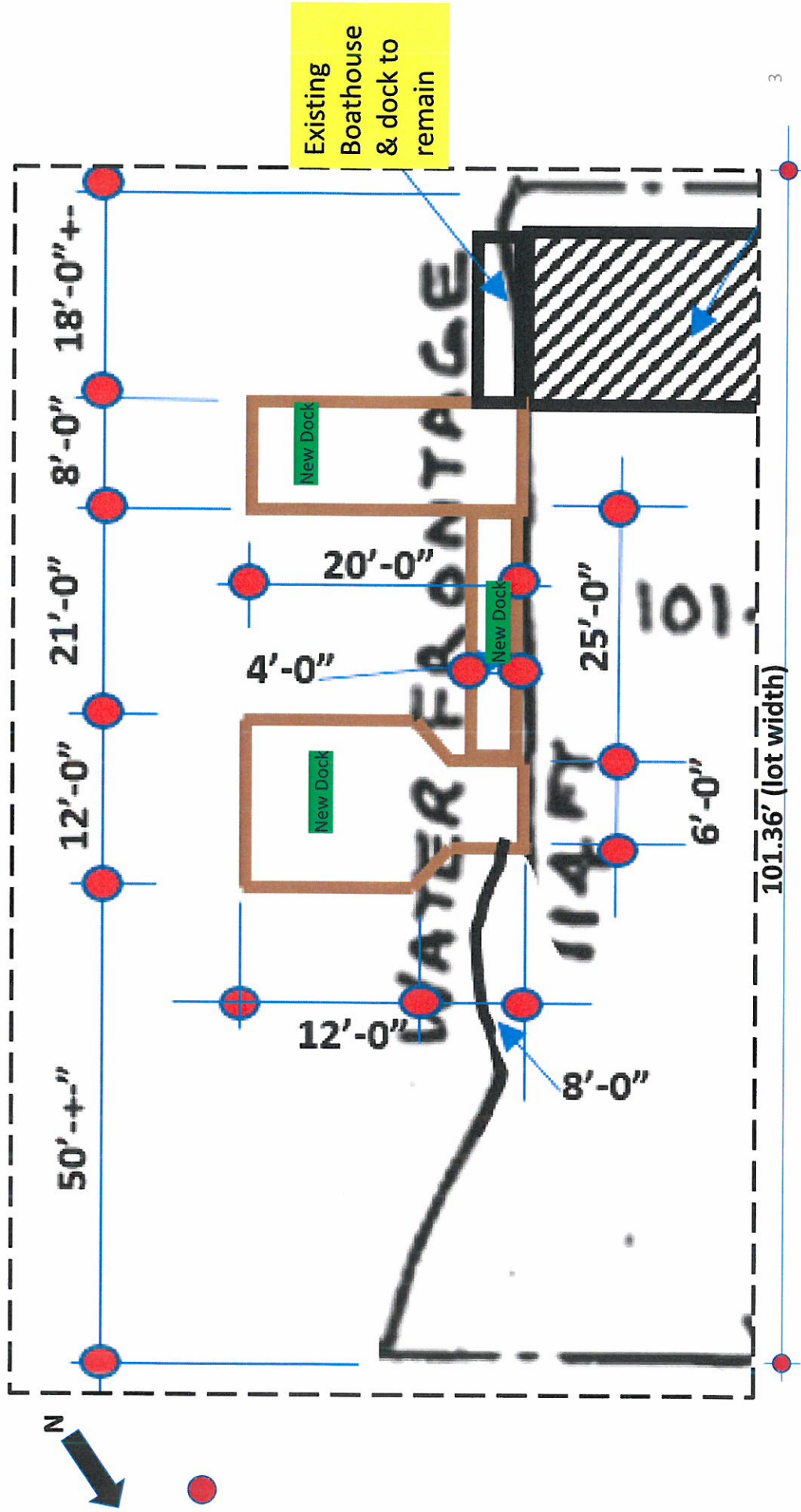
Existing Boathouse

New Dock

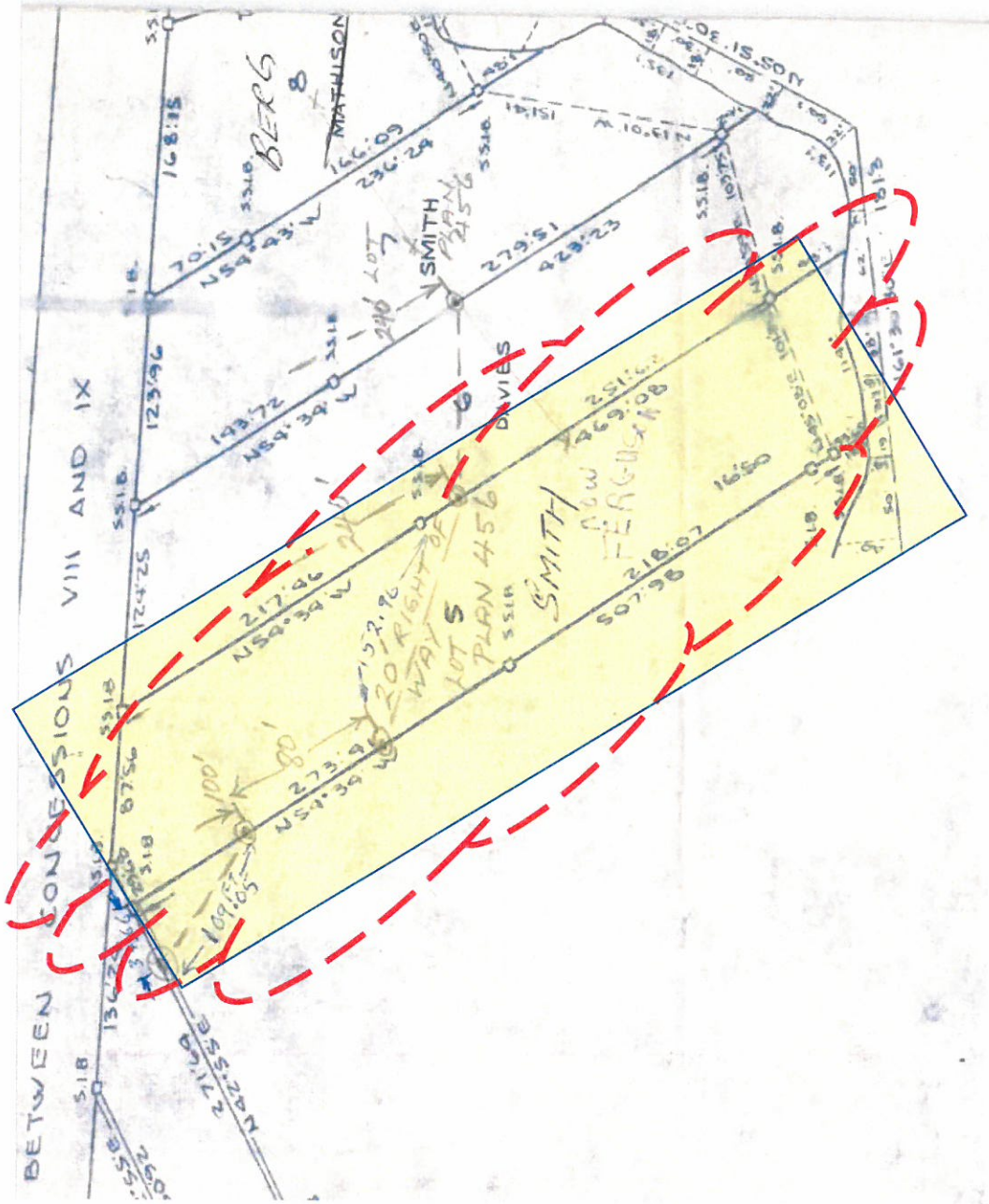
New Dock

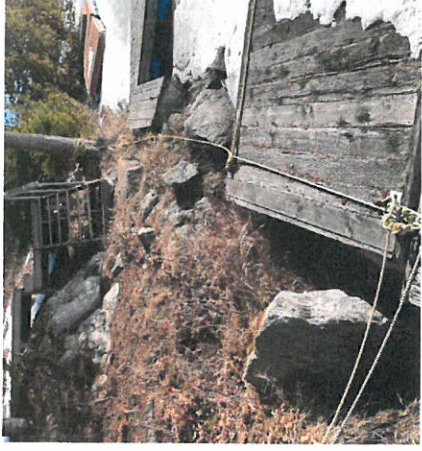
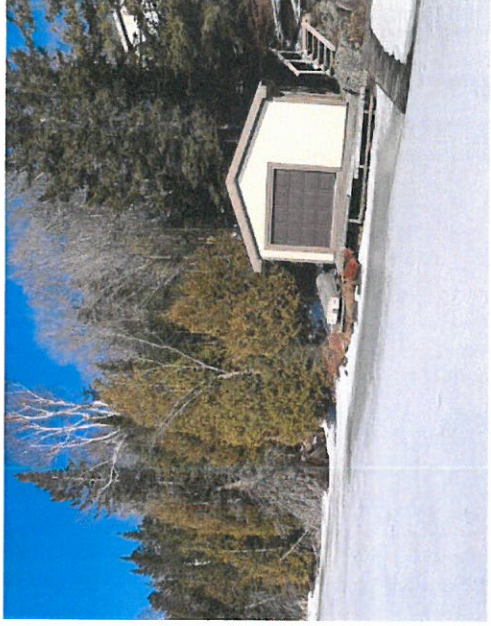
New Dock

New Dock Layout w/sizing & setbacks



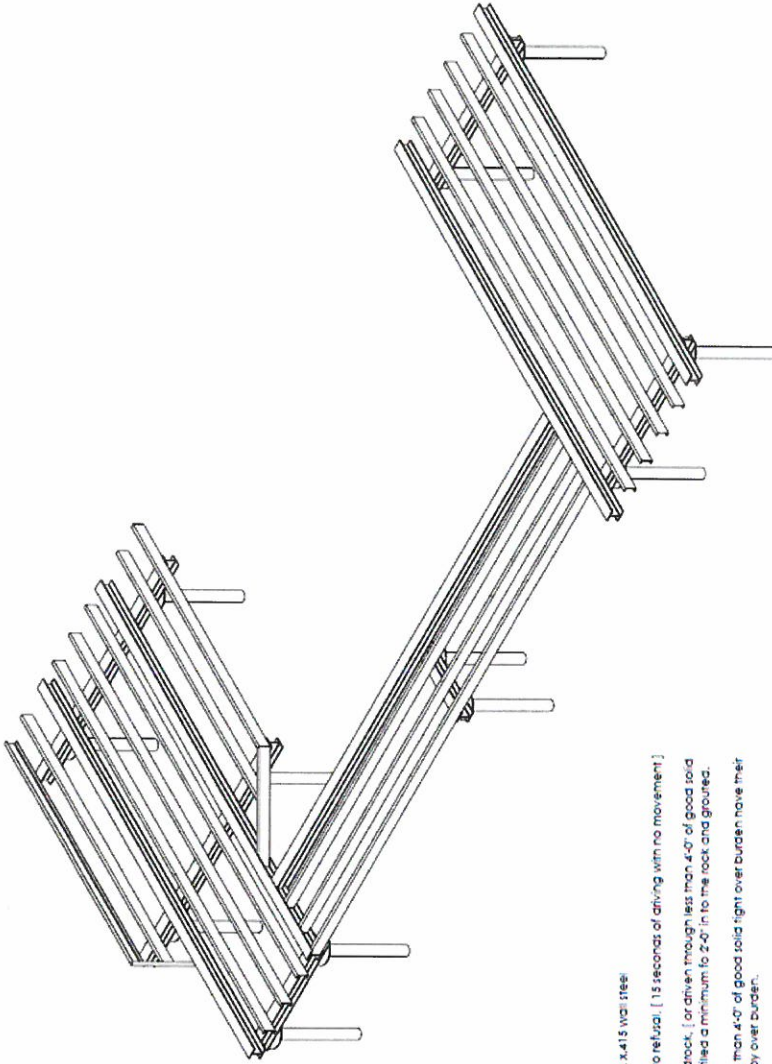
Kim Ferguson Site Plan - 1025 Culvert Drive, Cheddar, Highlands East - Paudash Lake





**Pictures of Property/Shoreline  
Kim Ferguson Site Plan  
1025 Culvert Drive, Cardiff,  
Highlands East - Paudash Lake**

# Proposed New Permanent Dock Drawings



## GENERAL NOTES

- The contractor will verify all dimensions on site and adjust as required.
- Do not scale drawings.
- Details of the structure have been derived from site inspection.
- Design Loads:
  - Roof/RAIN - 40lb/sq ft
  - Floor Dead Load - 150lb/sq ft
  - Floor Dead Load - 100lb/sq ft
  - Floor Live Load - 40lb/sq ft
  - Wind - ASCE 7-16
- Use appropriate engineering and spacing in the area.
- Use appropriate practices. Will Adequately resist any normal forces.
- Geotechnical engineering not included.
- Deicer or other measures not to be used to prevent ice damage.

## OUTLINE SPECIFICATIONS

### STEEL

- All steel to be A592 or A572 Grade 50.
- All fabrication and erection work to conform with the normal standards of the trade.
- R/J Machine is a CWS certified shop Division 2.
- All shop and field welding to be done by a CWS certified welder.
- Steel is not galvanized, but will receive a shop coat of rust retardant primer, as well as field touch up of a welder.
- Bolted connections shall be made using grade A325 bolts, unless noted otherwise.
- All steel beams (except lift beams) to have top flange pre-drilled for 8.5mm (3/8") bolted attachments of wood piles with 15mm (7/16") holes at 16" O.C. staggered.

### PILING

- All piles will be 5 1/2" O.D. x 41.5 wall steel.
- All piles are to be driven to refusal. (15 seconds of driving with no movement).
- Piles set on solid bare bedrock, (or driven through less than 4'-0" of good solid over burden), to be drilled a minimum to 2'-0" in to the rock and grouted.
- Piles driven through more than 4'-0" of good solid tight over burden have their toe adequately braced by over burden.
- Piles driven through less than 4'-0" of solid over burden, or through greater depths of unsatisfactory over burden (soft soil / vegetative matter) are to be drilled into the rock bearing and grouted in place.
- Long piles with over 8'-0" of height in the water are to be cross braced with 3" x 3" x 3/8" steel angle bracing.
- All pile legs to be maintained on this job indicating the total length of each pile and the length to the top of the lake bottom at each pile location.
- Maximum pile loading will be 25000lbs.
- Piles will be directly located below load points.
- Pile cutoffs will be accurate to +/- 1/8"
- Piles will be vertical at site conditions allow



**R & J Machine**  
MARINE DOCKING & LIFT SOLUTIONS

1601 Eighth Line, Lakeside ON, K0L 2H0  
Tel (705) 652-6733, 1-800-461-7638  
Fax (705) 652-6412 www.rjmachine.ca

TITLE: STEEL FRAMING - FERGUSON

DATE: 2022-04-12

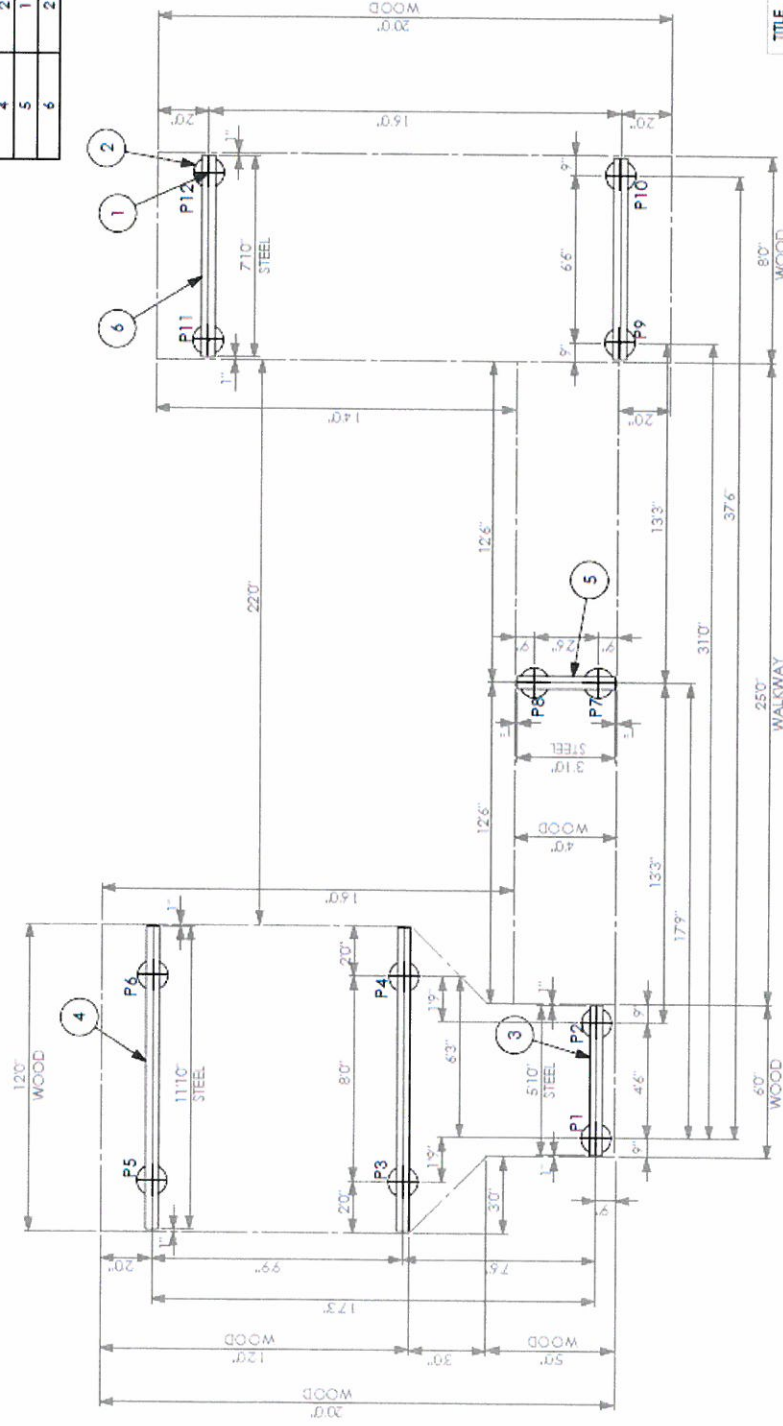
DRAWN BY: DWG. NO. 1

REV. 2022-04-12

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
EXCEPT WHERE SHOWN OTHERWISE THROUGHOUT  
THIS DOCUMENT IS UNCLASSIFIED

# Proposed New Permanent Dock - Drawings

ITEM NO.	QTY.	DESCRIPTION	LENGTH
1	12	5/2" O.D. PILE 0.415" WALL	TBD
2	12	1/2" X 1/4" DIA. PILE PLATE	PLASMA CUT
3	1	6@25WF	5' 10"
4	2	6@25WF	11' 10"
5	1	6@25WF	3' 10"
6	2	6@25WF	7' 10"



TITLE  
PILE LAYOUT - FERGUSON



**R & J Machine**  
MARINE DOCKING & LIFT SOLUTIONS

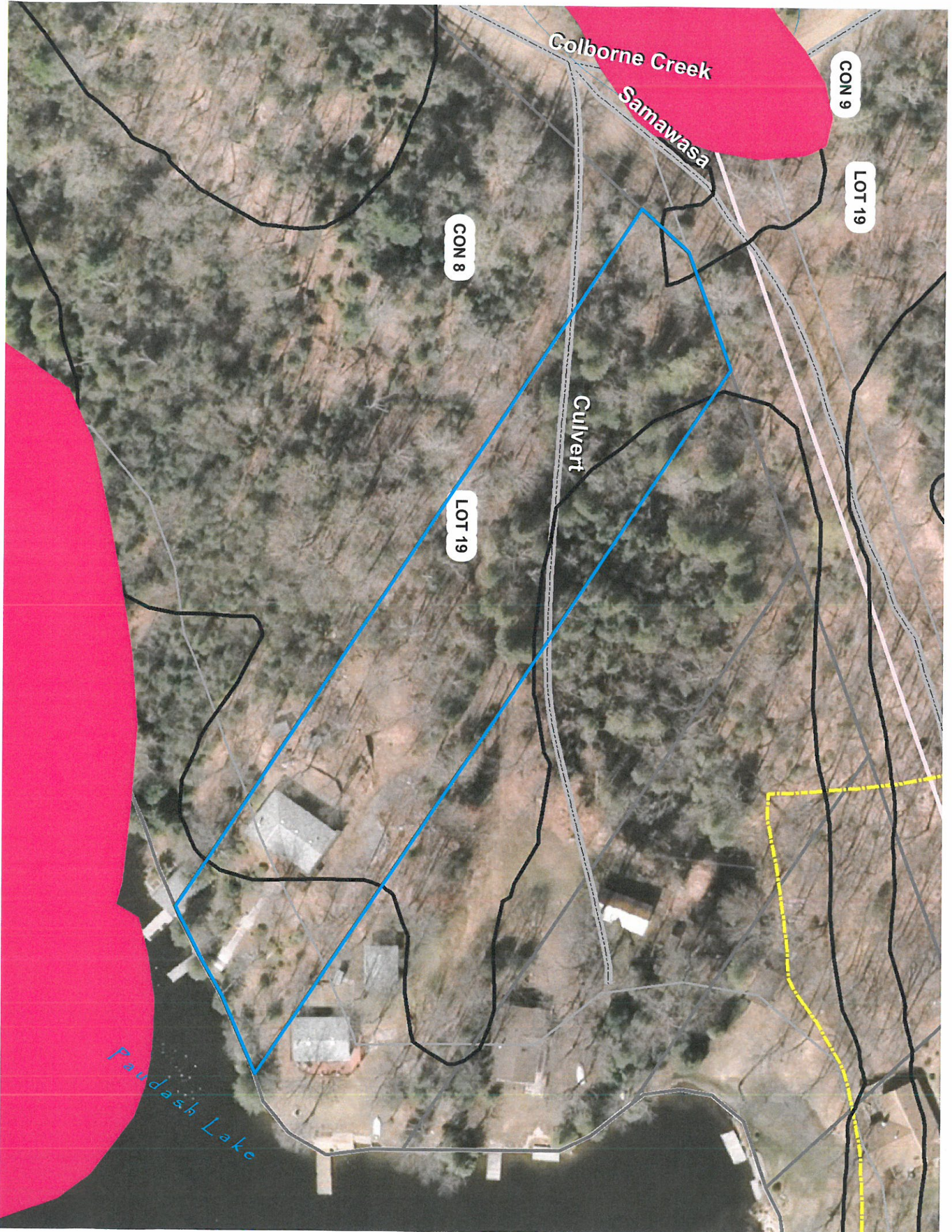
DATE: April 12, 2022 DRAWN BY: ROBBIE STEPHENS

PROPRIETARY AND CONFIDENTIAL  
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REV. 2022-04-12  
DWG. NO. 2







Golborne Creek

Samawasa

CON 9

LOT 19

CON 8

Culvert

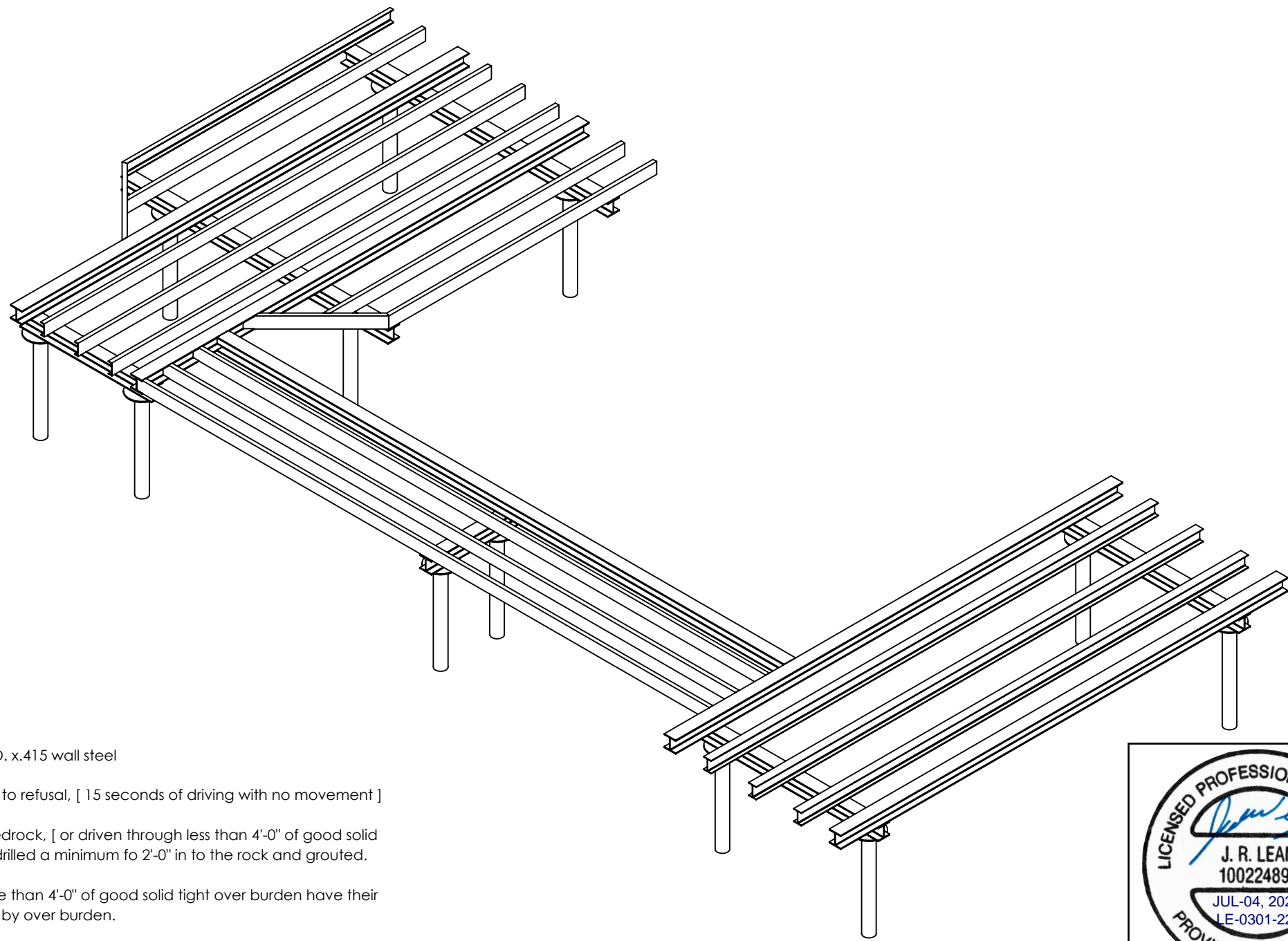
LOT 19

Paudash Lake

## **Appendix E**

### **Detailed Design Drawings**

#### **Steel Pile Dock System**



**GENERAL NOTES**

The contractor will verify all dimensions on site and adjust as required.

Do not scale drawings

Details of the structure have been derived from site inspection

Design Loads Snow/Rain -60lbs/sq ft  
 Roof Dead Load -15lbs/sq ft  
 Floor Dead Load -10lbs/sq ft  
 Floor Live Load -40lbs/sq ft  
 Ice and Wave forces -Nil-Framing and Bracing

to current best practice. Will Adequately resist any normal forces in the area

Geotechnical engineering not included

De-icer or other measures shall be used to prevent ice damage

**OUTLINE SPECIFICATIONS**

**STEEL**

All steel to be A992 or A572 Grade 50

All fabrication and erection work to conform with the normal standards of the trade

RJ Machine is a CWB certified shop Division 2

All shop and field welding to be done by a CWB certified welder

Steel is not galvanized, but will receive a shop coat of rust retardent primer, as well as field touch up of all welds

Bolted connections shall be made using grade A325 bolts, unless noted otherwise

All steel beams (except lift beams) to have top flange pre-drilled for 9.5mm (3/8") bolted attachments of wood nailers with 15mm (7/16") holes at 16" O.C. staggered

**PILING**

All piles will be 5 1/2" O.D. x.415 wall steel

All piles are to be driven to refusal, [ 15 seconds of driving with no movement ]

Piles set on solid bare bedrock, [ or driven through less than 4'-0" of good solid over burden ], re to be drilled a minimum fo 2'-0" in to the rock and grouted.

Piles driven through more than 4'-0" of good solid tight over burden have their toe adequately braced by over burden.

Piles driven through less than 4'-0" of solid over burden; or through greater depths of unsatisfactory over burden [ soft soil / vegetative mater ] are to be drilled into the rock bearing and grouted in place.

Long piles with over 8'-0" of height in the water are to be cross braced with 3" x 3" x 3/8" steel angle bracing.

A pile log is to be maintained on this job indicating the total length of each pile and the length to the top of the lake bottom at each pile location.

Maximum pile loading will be 25000lbs

Piles will be directly located below load points

Pile cutoffs will be accurate to +/- 1/8"

Piles will be vertical as site conditions allow



**JACOB R. LEAN**  
 ENGINEERING  
 COE HILL, ONTARIO  
 Tel: 705-260-0191

PROJECT LOCATION:  
 1025 Culvert Drive, Cardiff,  
 Municipality of Highlands East, ON

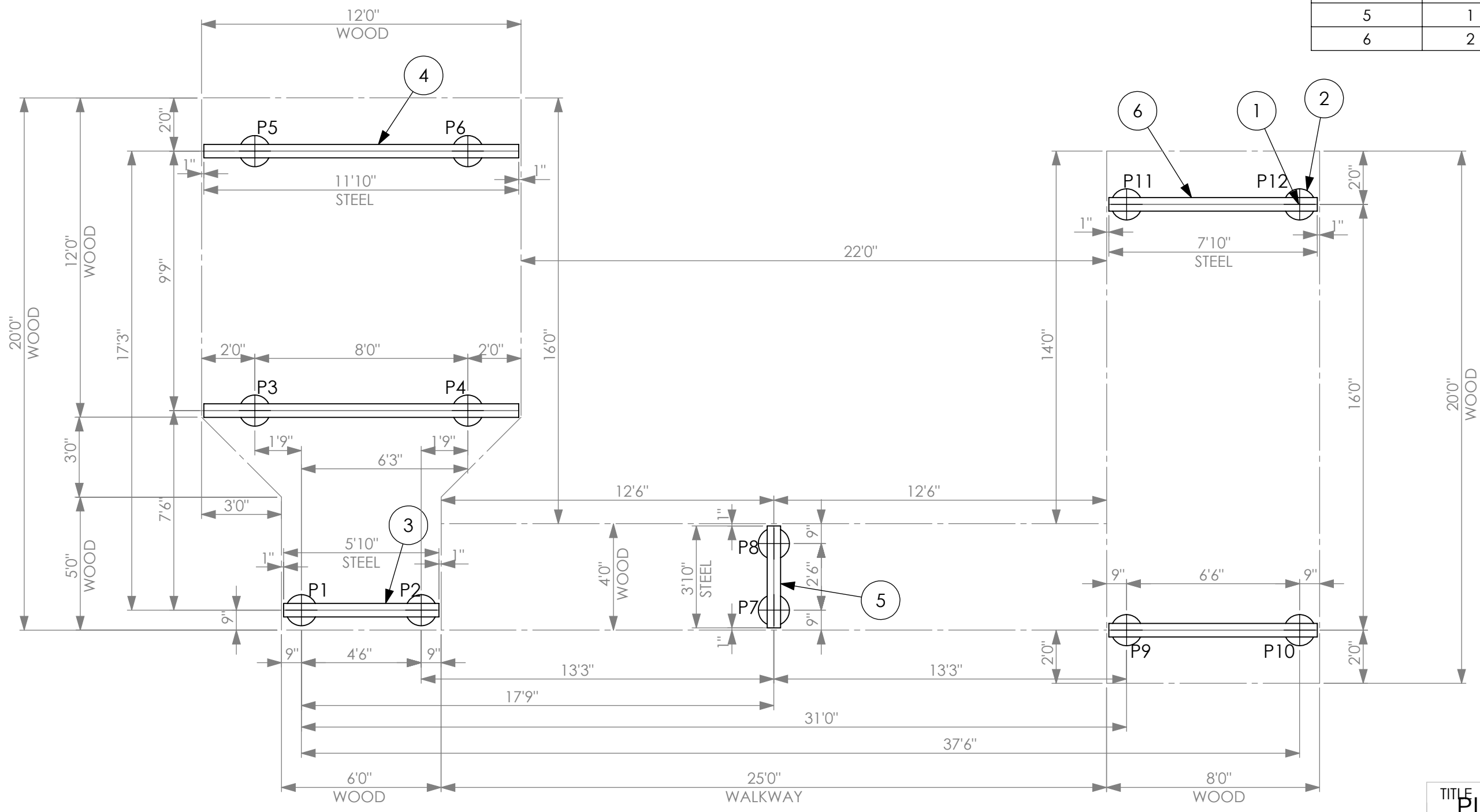


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 Tel (705) 652-6731 1-800-461-7638  
 Fax (705) 652-6412 www.rjmachine.ca

TITLE		STEEL FRAMING - FERGUSON	
DATE:	2022-07-04	DRAWN BY	
PROPRIETARY AND CONFIDENTIAL		DWG. NO. 1	
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ITEM NO.	QTY.	DESCRIPTION	LENGTH
1	12	5 1/2" O.D. PILE 0.415" WALL	TBD
2	12	1/2 x 14" DIA. PILE PLATE	PLASMA CUT
3	1	6@25WF	5' 10"
4	2	6@25WF	11' 10"
5	1	6@25WF	3' 10"
6	2	6@25WF	7' 10"



TITLE  
**PILE LAYOUT - FERGUSON**

DATE: April 12, 2022      DRAWN BY ROBBIE STEPHENS

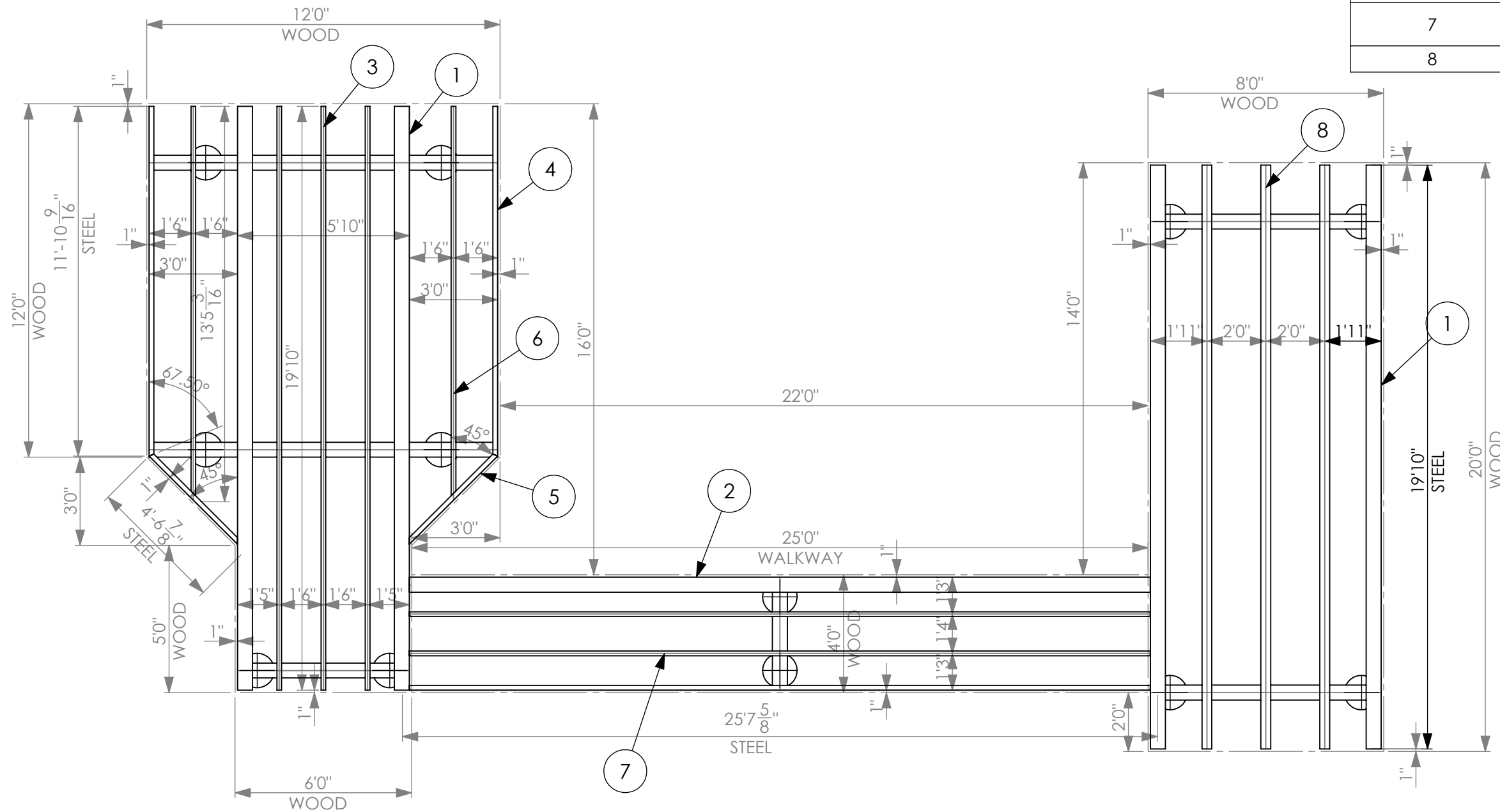
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**R & J Machine**  
 MARINE DOCKING & LIFT SOLUTIONS

Tel (705) 652-6731 Fax (705) 652-6412  
 Email ryar@rjmachine.ca Lakefield, ON

ITEM NO.	QTY.	DESCRIPTION	LENGTH
1	2	6@25WF	19' 10"
2	1	6@25WF	25' 7 5/8" (COPE BOTH ENDS)
3	3	C6@8.2 CHANNEL	19' 10"
4	2	C6@8.2 CHANNEL	11' 10 9/16" (L-67.5L)
5	2	C6@8.2 CHANNEL	4' 6 7/8" (67.5L-45L) COPE 45° END
6	2	C6@8.2 CHANNEL	13' 5 3/16" (L-45L) COPE 45° END
7	3	C6@8.2 CHANNEL	25' 7 5/8" COPE BOTH ENDS
8	3	6@12WF	19' 10"



TITLE  
STEEL FRAMING - FERGUSON

DATE: April 12, 2022 DRAWN BY ROBBIE STEPHENS

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REV. 2022-07-04



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Email ryar@rjmachine.ca Lakefield, ON

**Appendix F**

**Ontario Land Tribunal Decision**

**OLT-21-001536**

**Re: Refusal to grant permission for the installation of a deck and dock**

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** June 10, 2022

**CASE NO(S):** OLT-22-002914  
(Formerly) CA 001-20

**PROCEEDING COMMENCED UNDER** section 28(15) of the *Conservation Authorities Act*, R.S.O. 1990, c. C. 27, as amended

Appellants:	Eric and Antonia DenOuden
Respondent:	Quinte Conservation
Subject:	Appeal against the refusal to grant permission for the installation of a deck and dock (Permit Application No. REG0223-2019)
Property Address/Description:	2836 County Road 3, Part Lot 95, Concession 1, Ameliasburgh
Municipality:	Prince Edward County
OLT Case No.:	OLT 21-001536
Legacy Case No.:	CA 001-20
OLT Case Name:	DenOuden v. Quinte Conservation

**Heard:** In writing

**APPEARANCES:**

**Parties**

**Representative**

Eric and Antonia DenOuden

Self-represented

Quinte Conservation

Sharlene Richardson  
Paul McCoy  
Brad McNevin

**DECISION DELIVERED BY M. ARPINO AND ORDER OF THE TRIBUNAL**

---

## OVERVIEW

[1] Eric and Antonia DenOuden (“Appellants”) own the property at 2836 County Road 3, Prince Edward County (“Property”). The Property is located on the south shore of the Bay of Quinte in Prince Edward County.

[2] On August 27, 2019, the Appellants submitted Permit Application No. REG0223-2019 to the Quinte Conservation Authority (“Conservation Authority”) seeking permission to:

- a. construct a dwelling;
- b. install a septic system;
- c. construct an armourstone wall along the shoreline;
- d. place turf-slab permeable pavers as a boat ramp; and
- e. construct a permanent pile supported deck and cantilevered dock (“Deck and Dock”).

[3] Permit No. REG0223-2019 was issued on October 7, 2019, for construction of the dwelling and installation of the septic system.

[4] On October 25, 2020, Permit No. REG0383-2020 was issued for the creation of a boat ramp with turf-slab permeable paver base, an armourstone wall and a concrete dock abutment.

[5] The Conservation Authority staff recommended denial of permission to construct the Deck and Dock.

[6] The matter regarding the requested permit for the Deck and Dock was referred to the Hearing Committee of the Conservation Authority (“Hearing Committee”).



[7] On December 5, 2019, the Hearing Committee denied the requested permit. The Notice of Decision provides,

THAT, the Committee decision is to support the staff recommendation that the application be denied as the application violates O. Reg 319/09, and that although the displacement of water is not measurable, there would be a cumulative impact for allowing this type of development.

[8] The Appellants appealed the decision of the Hearing Committee to the Tribunal (“Appeal”) under s. 28 (15) of the *Conservation Authorities Act* (“Act”).

[9] On March 31, 2021, the Tribunal convened a pre-hearing conference to determine the status of the Appeal and to move the matter forward. The Tribunal directed that the Appeal proceed as a written hearing with submissions being exchanged between the Parties and filed with the Tribunal.

[10] Under s. 28(15) of the Act, the Tribunal may refuse permission to undertake development or grant permission with or without conditions. The Appellants must satisfy the applicable statutory, regulatory, and policy requirements for granting permission.

[11] In the present case, the Tribunal must:

- a. determine if granting a permit to construct the Deck and Dock would be consistent with Provincial Policy Statement, 2014 (“PPS”);
- b. ascertain if issuing a permit to construct the Deck and Dock would comply with the regulatory requirements in Ontario Regulation 319/09 (“Regulation 319/09”); and
- c. have regard to the Conservation Authority’s policies created for the purpose of guiding the exercise of its powers (Quinte Conservation Authority: Regulation of Development, Interference with Wetlands and

Alterations to Shorelines and Watercourses) under the Act and Regulation 319/09 (“Conservation Authority Policies”).

[12] The primary issue in the Appeal is if construction of the Deck and Dock is exempt from the prohibitions stipulated in s. 2.(1) of Regulation 319/09 which provides:

Development prohibited

- 2.(1) Subject to section 3, no person shall undertake development or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,
- (a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beaches, including the area from the furthest offshore extent of the Authority’s boundary to the furthest landward extent of the aggregate of the following distances:
- (i) the 100 year flood level, plus the appropriate allowance in metres for wave uprush and, if necessary, an appropriate allowance in metres for other water related hazards, including ice piling and ice jamming,
  - (ii) the predicted long term stable slope projected from the existing stable toe of the slope or from the predicted location of the toe of the slope as that location may have shifted as a result of shoreline erosion over a 100- year period,
  - (iii) where a dynamic beach is associated with the waterfront lands, an allowance of 30 metres inland to accommodate dynamic beach movement, and (iv) an allowance of 15 metres inland;...
- (emphasis added)

Permission to develop

3.(1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development. (emphasis added)

[13] There is a similar provision in the Conservation Authority Policies s. 4.4.11 which provides:

...new development within the shoreline flood, erosion or dynamic beach hazard may be permitted where it has been demonstrated to the

satisfaction of QCA that the control of flooding, erosion, pollution, dynamic beaches or the conservation of land will not be affected...

## **EVIDENCE AND SUBMISSIONS**

### **Evidence and Submissions of the Conservation Authority**

[14] The Conservation Authority submitted a report dated November 14, 2019, prepared by Sharlene Richardson – Regulations Officer.

[15] She recommended denial of the permit for the Deck and Dock “*because is contrary to the QC Policy and Procedures Manual which clearly directs development to areas outside of the hazard and required setbacks.*”

[16] Ms. Richardson asserts that the Deck and Dock would affect the “control of flooding” or the “conservation of land because the anchor and footings result in a displacement of water and the development results in a loss of natural shoreline habitat”.

[17] She also asserts that construction of the Deck and Dock is not consistent with s. 3.1 of the PPS, which directs development to areas outside of flooding hazards.

### **Evidence and Submissions of the Appellants**

[18] The Appellants provided a written submission dated June 23, 2021.

[19] The Appellants stated that the Conservation Authority shares jurisdiction over the Bay of Quinte with the Cataraqui Conservation Authority (“Cataraqui Authority”). The Appellants submit that Cataraqui Authority routinely issues permits for construction of permanent boat dock supports to be placed in the Bay of Quinte.

[20] The Appellants argue that it is unreasonable for the Conservation Authority to deny a permit for something that is routinely permitted on the opposite side of the Bay.

[21] The Appellants submit that temporary docks have the potential to displace water and that the Conservation Authority allows the installation of temporary docks without permits.

[22] The Appellants assert that the Conservation Authority does not have a “serious concern” about the displacement of water and that displacement of water is not a valid reason to deny the requested permit.

[23] The Appellants state that the Deck and Dock would result in improved erosion control and potential flood reduction.

[24] The Appellants assert that s. 3 of Regulation 319/09 stipulates exemptions to the restrictions in s. 2.(1) and that the proposed Deck and Dock is permitted because it falls within the parameters of the exemptions.

[25] The Appellants provided an opinion letter dated October 24, 2019 from SJL Engineering Inc. (“SJL Engineering”), which includes the following statement:

In general, development within the shoreline hazard limit is not permitted, as per the QCA Policy Manual for Ontario Reg. 319/09.

[26] SJL Engineering referenced s. 4.4.11 of the Conservation Authority Policies which provides:

New development within the shoreline flood, erosion or dynamic beach hazard may be permitted where it has been demonstrated to the satisfaction of QCA that the control of flooding, erosion, pollution, dynamic beaches or the conservation of land will not be affected.

[27] SJL Engineering stated: “There is therefore no merit in performing an uprush analysis as the proposed structure is well within the regulation limit, as described in Section 2 of Ontario Reg. 319/09.”

[28] SJL Engineering provided a detailed analysis regarding the impact of construction of the Deck and Dock on control of flooding erosion pollution, dynamic beaches or the conservation of land:

- a. ...Control of Flooding.... it is the opinion of the engineer that little to no effect on flooding would be incurred by the proposed structure, with any marginal effect ultimately being positive to the control of flooding due to minor obstructions to wave uprush.
- b. ...Control of Erosion.... it is the opinion of the engineer that the proposed development has a minor, but positive influence on the control of erosion.
- c. Control of Pollution... After the construction period is complete, there is no further potential for pollution. As such, any risks associated with the control of pollution are limited to the construction period and can be readily mitigated...
- d. Conservation of Land... It is therefore the opinion of the engineer that the proposed works will have no measurable impact on the conservation of land and will in fact have a positive impact relative to a similar seasonal structure that requires annual placement and removal.
- e. Dynamic Beaches... The shoreline in question does not meet the requirements provided in the Ministry of Natural Resources Technical Guide for the Great Lakes (MNR, 2001) to be defined as a dynamic beach. As such, dynamic beach impacts are not relevant.

[29] SJL Engineering addressed the requirements regarding access to the shoreline:

The proposed deck and dock structure are situated on the shoreline, but do not impede access to it. As such, it is the opinion of the engineer that the proposed development does not impede the minimum 6 m access allowance that must be provided.

[30] SJL Engineering provided the following closing remarks:

...it is the opinion of the engineer that the pile supported, and cantilevered design of the proposed deck and dock is justified given the distance from the shoreline to navigable waters, and that the control of flooding, erosion, pollution, dynamic beaches and the conservation of land will not be negatively affected by the proposed works.

[31] The Appellants assert that the Tribunal should prefer the professional opinion of SJL Engineering over the evidence of Ms. Richardson.

[32] The Tribunal notes that the SJL Engineering opinion letter was drafted by Seth Logan, P. Eng., a licensed engineer in the Province of Ontario with over 10 years of coastal engineering experience.

### **ANALYSIS AND FINDINGS**

[33] The question for the Tribunal to determine is whether construction of the Deck and Dock will affect the control of flooding erosion, dynamic beaches, pollution, and the conservation of land.

[34] Based on the evidence before it, the Tribunal finds that the Appellants have failed to demonstrate that the construction of the Deck and Dock will have no affect on the control of flooding erosion, control of pollution, conservation of land.

[35] Section 28(15) of the Act provides the Tribunal with discretion when determining whether to grant or refuse a permission:

- 28(15) A person who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Ontario Land Tribunal, and the Tribunal may,
- (a) refuse the permission; or
  - (b) grant the permission, with or without conditions.

### **Compliance with Regulation 319/09**

[36] There is also no argument regarding the prohibition of the Deck and Dock pursuant to s. 2.1 of Regulation 319/09.

[37] The Appellants submit that construction of the Deck and Dock is permitted pursuant to Regulation 319/09 s. 3 and is consistent with Conservation Policy s. 4.4.11.

[38] SJL Engineering provided a detailed analysis of the impact of the Deck and Dock on control of flooding erosion pollution, dynamic beaches or the conservation of land:

- a. SJL Engineering opined that the Dock and Deck would have little or no affect on control of flooding. Minor or positive influence to control erosion.
- b. SJL Engineering concluded that the affect of the Deck and Dock on pollution is limited to the construction period and can be readily mitigated.

[39] SJL Engineering also opined that the Deck and Dock would have no measurable impact on the conservation of land.

[40] SJL Engineering has opined that construction of the Deck and Dock would have little, if any, negative affect and in some circumstances, it might have a positive impact.

[41] The Appellants state that the Conservation Authority has not provided any evidence to support its claim that construction of the Deck and Dock would affect the control of flooding erosion, dynamic beaches, pollution, and the conservation of land.

[42] Given these findings, the Tribunal finds that the proposed development does not comply with Regulation 319/09.

### **Consistency with the Conservation Authority's Policies**

[43] The Conservation Authority created the Conservation Authority's Policies for the purpose of guiding the exercise of its powers under the Act and Regulation 319/09. The standard practice of the Tribunal is to have regard to non-binding policies such as these when making a decision.

[44] Conservation Authority Policy 4.4.11 is similar to Regulation 319/09. The Tribunal has had regard for the Conservation Authority Policies.

### **Consistency with the PPS**

[45] In the present case, the Tribunal must determine if construction of the Deck and Dock is consistent with the PPS.

[46] The Conservation Authority asserts that construction of the Deck and Dock in the floodplain is not consistent with the PPS.

[47] Policy 3.1 of the PPS generally directs development away from Natural Hazards. It is uncontested that the Appellants seek a permit to construct the Deck and Dock within the Shoreline Hazard Limit.

[48] Policy 3.1.4 provides exceptions to Policy 3.1. The Appellants have failed to provide evidence that construction of the Deck and Dock on the Property satisfies any of the criteria for exemption in Policy 3.1.

### **DECISION AND ORDER OF THE TRIBUNAL**

[49] Based on the evidence and submissions before it, the Tribunal finds that permission to construct the Deck and Dock on the Property would not comply with Ontario Regulation 319/09 and would not be consistent with the Provincial Policy Statement.

[50] The Tribunal orders that the Appeal is dismissed.



[51] The Tribunal directs that no costs shall be payable by either party to this Appeal.

*“M. Arpino”*

M. ARPINO  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.